

CONSTRUCTION MANAGEMENT AGREEMENT

The BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "Owner", hereby contracts with THE HASKELL COMPANY, a FIRM authorized to do business in the State of Florida, whose business address is 111 RIVERSIDE AVENUE, JACKSONVILLE, FLORIDA 32202-4950, hereinafter referred to as the "Construction Manager", to perform all work ("Work") in connection with the management and construction of that certain construction of the NASSAU COUNTY COURTHOUSE FACILITY ("Project"), located at 24100 WILLIAM BURGESS BOULEVARD, YULEE, FL 32097, said Work being set forth in the Plans and Specifications being prepared by SPILLIS CANDELA & PARTNERS, INC., the Architect and of Record ("Design Professional") and other Contract Documents hereafter specified.

Owner and Construction Manager, for the consideration herein set forth, agree as follows:

Section 1. Contract Documents.

A. The Contract Documents consist of this Agreement, the Exhibits described in Section 8 hereof, and any duly executed and issued addenda, Change Orders, Work Directive Changes, Field Orders and amendments relating thereto. Further, the term Contract Documents shall include all plans and specifications ("Construction Documents") being prepared by the Design

Professional, but only after said Construction Documents have been completed by the Design Professional and approved by the Owner. All of the foregoing Contract Documents are incorporated by reference and made a part of this Agreement (all of said documents including the Agreement sometimes being referred to herein as the "Contract Documents", "Contract", and "Agreement").

B. Owner shall furnish Construction Manager with three (3) copies and one (1) reproducible set of Contract Documents. Any additional copies of Contract Documents, required by Construction Manager for execution of the Work, shall be made by Construction Manager from its reproducible set at Construction Manager's sole cost and expense. Provided, however, Owner is furnishing Construction Manager a reproducible set of Contract Documents for Construction Manager's convenience and such furnishing by Owner shall not be deemed to be a waiver by Owner or Design Professional of any copyright, patent or license they may have with respect to the Contract Documents. All such copyrights, patents, and licenses hereby being expressly reserved by Owner and Design Professional.

Section 2. Scope of Work

A. **Design Phase Services.** Construction Manager shall review and comment upon the Construction Documents as developed

by the Design Professional. The scope of that review shall include, but shall not be limited to, reviewing those various documents for constructability. Construction Manager agrees to attend any and all pre-construction conferences and to otherwise assist and cooperate with the Design Professional with respect to the final design of the Project. Construction Manager shall provide all other services during the Design Phase of the Project as set forth in the Supplemental Terms and Conditions attached hereto as Exhibit "B" and other Contract Documents.

B. **Construction Phase Services.** After the Construction Documents have been completed by the Design Professional and approved by Owner, Construction Manager shall furnish and pay for all management, supervision, labor, materials, tools, fuel, supplies, utilities, equipment, and services of every kind and type necessary to diligently, timely, and fully perform and complete in a good and workmanlike manner the Work in order to fully construct the Project in accordance with all of the terms and conditions of the Contract Documents.

Section 3. Definitions

1. **Construction Manager** - the person, firm, or corporation with whom the Owner has executed the Agreement.

2. **Owner** - Board of County Commissioners of Nassau County, Florida.

3. **Owner's Project Manager** - the authorized representative of the Owner who is assigned to the Project site of any part thereof.

4. **Work** - all labor necessary to produce the construction required by the Contract Documents, and all materials equipment incorporated or to be incorporated into the project.

Section 4. Relationship of Parties

Construction Manager accepts the relationship of trust and confidence established by this Agreement. Construction Manager covenants with Owner to cooperate with the Design Professional; to utilize Construction Manager's best skill, efforts, and judgment in furthering the interest of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and the most expeditious and economical manner, consistent with the interests of Owner. Further, Construction Manager acknowledges that (i) it has represented to Owner that it has specific expertise in the planning, management and construction of **COURTHOUSES AND JUSTICE CENTERS**, and other such facilities, and (ii) that such representation is a material inducement to Owner to enter into this Agreement.

Section 5. Contract Amount

In consideration of the faithful performance by Construction Manager of the covenants in this Agreement to the full satisfaction and acceptance of Owner, Owner agrees to pay, or cause to be paid, to Construction Manager the following amounts (herein "Contract Amount"), in accordance with the terms of this Agreement:

A. **Design Phase.** For all Design Phase Services, including, but not limited to, reviewing Construction Documents for constructability, assisting and meeting with Design Professional during the final design phase, Construction Manager shall receive the fixed amount of thirty six thousand nine hundred seven dollars and no cents (\$36,907.00) as the total lump-sum compensation for its services.

B. **Construction Phase.** With respect to the Construction Phase Services to be provided by Construction Manager hereunder, Owner shall reimburse Construction Manager for the Cost of the Work (as that term is defined hereafter). The Construction Manager's fee shall be 5.25 percent (5¼%) of the GMP as established in Amendment Number 1 after the bids are received. The Construction Management Fee shall be Construction Manager's total compensation for all overhead not reimbursable under Section 6.A. below, as well as Construction Manager's total profit for Construction Phase Services.

Construction Manager agrees to provide Owner with a guaranteed maximum price ("GMP") for the Cost of the Work within ~~28~~ 35 calendar days after the Construction Documents are completed by Design Professional and approved by Owner and Notice To Proceed is issued. The GMP shall be based upon the previous cost estimates provided by Construction Manager as required hereunder. The GMP shall be mutually agreed upon by Owner and Construction Manager and shall be set forth in Amendment No. 1. A form for Amendment No. 1 is attached hereto as Exhibit "K". Construction Manager shall provide a detailed breakdown of the GMP acceptable to Owner. Construction Manager guarantees that, except for Change Orders as expressly provided for herein, in no event shall the total Cost of the Work exceed the GMP.

Section 6. Cost of Work

A. **Cost to be Reimbursed.** The term Cost of Work shall mean all costs necessarily and reasonably incurred by Construction Manager in the proper performance of the Construction Phase Services portion of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of Owner. The Cost of Work shall include only those items set forth below in this subsection A:

B. **Labor Costs.**

- a. Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project site or, with the Owner's written agreement, at off-site workshops.
- b. Wages or salaries of the Construction Manager's supervisory and administrative personnel who are stationed at the Project site, or off-site with the Owner's written agreement as per the Construction Manager's Staffing Plan.
- c. Wages and salaries of the Construction Manager's supervisory and administrative personnel engaged at factories, workshops, or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- d. Costs paid or incurred by Construction Manager for taxes, insurance, contributions, assessments and benefits required by law and collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits,

holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under subsections a through c, above, but in any event excluding bonuses and other similar extraordinary benefits.

- C. **Subcontract Costs.** Payments made by Construction Manager to subcontractors in accordance with the requirements of the subcontracts.
- D. **Cost of Materials and Equipment Incorporated into the Completed Construction.**
- a. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- b. Costs of materials described in subsection a, above, in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to Owner at the completion of the Work or, at the Owner's option, shall be sold by Construction Manager; amounts realized, if any, from such sales, shall be credited to the Owner as a deduction from the Costs of Work.

E. Costs of other materials and equipment, temporary facilities, and related items.

- a. Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Manager. Costs for items previously used by Construction Manager shall mean fair market value.
- b. Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall

be subject to the Owner's prior written approval.

- c. Cost of removal of debris from the Project site.
- d. Costs of telegrams, long distance telephone calls, postage and parcel delivery charges and telephone service at the Project site and reasonable petty cash expenses of the Project site office.

F. **Miscellaneous Costs.**

- a. That portion of premiums for insurance and bonds directly attributable to this Contract.
- b. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Manager is liable.
- c. Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Manager is required by the Contract Documents to pay.
- d. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or non-conforming Work for which reimbursement is excluded pursuant to the terms of this Contract.

- e. Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents.
- f. Deposits lost for causes other than the Construction Manager's fault or negligence.
- G. **Other Costs.** Other costs incurred in performance of the Work if any to the extent approved in advance in writing by Owner.
- H. **Costs Not to be Reimbursed.** The Cost of the Work shall not include the following items:
 - 1. Salaries and other compensation of the Construction Manager's personnel stationed at Construction Manager's principal office or offices other than the Project site office.
 - 2. Expenses of Construction Manager's principal office and offices other than the Project site office.
 - 3. Overhead and general expenses, except as may be expressly included in subsection B above.
 - 4. Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
 - 5. Rental costs of machinery and equipment, except as specifically provided in subsection B.3.b above.

6. Costs due to the fault or negligence of Construction Manager, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
7. Any costs not specifically and expressly described in subsection B above.
8. Costs which would cause the GMP to be exceeded except as otherwise provided.

I. **Discounts, Rebates and Refunds.**

1. Cash discounts obtained on payments made by Construction Manager shall accrue to Owner if (i) before making the payment, Construction Manager included them in an application for payment and received payment therefore from the Owner, or (ii) Owner has deposited funds with Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and

equipment shall accrue to Owner, and Construction Manager shall make provisions so that they can be secured.

2. Amounts which accrued to the Owner in accordance with the provisions of subsection D.1. above shall be credited to Owner as a deduction from the Cost of the Work.

Section 7. Bonds.

A. Within five (5) calendar days after the GMP is agreed to by Owner and Construction Manager, Construction Manager shall provide Owner with Performance and Payment Bonds, in the form prescribed in Exhibit "C", in the amount of one hundred percent (100%) the total sum of the Construction Manager Fee and the GMP, the costs of which are to be paid by Construction Manager. The Performance and Payment Bonds shall be underwritten by a surety, must comply with the following provisions, and must be otherwise acceptable to Owner:

1. The Surety Company shall have a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The Surety Company shall have a currently valid Certificate of Authority issued by the United States

Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.

3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
5. If the Contract Award Amount exceeds \$500,000.00, the Surety Company shall also comply with the following provisions:

(a) The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide:

<u>CONTRACT</u>	<u>POLICY HOLDER'S RATING</u>	<u>REQUIRED FINANCIAL RATING</u>
\$ 500,000 to 1,000,000	A	CLASS IV
1,000,000 to 2,500,000	A	CLASS V
2,500,000 to 5,000,000	A	CLASS VI
5,000,000 to 10,000,000	A	CLASS VII
10,000,000 to 25,000,000	A	CLASS VIII
25,000,000 to 50,000,000	A	CLASS IX
50,000,000 to 75,000,000	A	CLASS X

(b) The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policyholders, provided:

(1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this State have been met.

(2) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any surety deposited, pledged, or held subject to the consent of the surety and for the protection of the surety shall be deducted.

B. Subcontracts over \$200,000.00 will be bonded in a form acceptable to Owner. Owner shall be identified as an obligee. The Subcontractor Bonds will be acceptable to the Owner only if the following conditions are met: The Surety company (i) is licensed to do business in the State of Florida; (ii) hold a certificate of authority authorizing it to write surety bonds in this state; (iii) has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued; (iv) is otherwise in

compliance with the provisions of the Florida Insurance Code; (v) holds a currently valid certificate of authority issued by the United State Department of Treasury under 31 U.S.C. §§9304-9308.

C. If the surety for any bond furnished by Construction Manager is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, Construction Manager shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to Owner's approval.

Section 8. Contract Time and Liquidated Damages.

A. Time is of the essence in the performance of the Work under this Agreement. The "Design Phase Commencement Date" shall be established in a Notice to Proceed to be issued by Owner. Construction Manager shall commence the Design Phase Services portion of the Work within five (5) calendar days after the Design Phase Commencement Date. Any Work performed by the Construction Manager prior to the Design Phase Commencement Date shall be at the sole risk of Construction Manager. The "Construction Phase Commencement Date" shall be established in a Notice to Proceed to be issued by Owner after the Construction Documents have been completed by the Design Professional and approved by the Owner. Construction Manager

shall commence the Construction Phase Services portion of the Work within five (5) calendar days after the Construction Phase Commencement Date. No portion of the Work, with respect to the Construction Phase Services to be provided hereunder, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by Owner in writing. The total period of time beginning with the Design Phase Commencement Date and ending on the date of final acceptance of the Work by Owner is referred to hereafter as the "Contract Time". The Contract Time shall be mutually agreed upon by Owner and Construction Manager, with both parties signifying their approval by executing Amendment No. 1, a form of which is attached hereto as Exhibit "K".

B. Liquidated damages, if any, which may be assessed by Owner against Construction Manager in the event Construction Manager fails to complete with Work within the Contract Time in accordance with the terms of this Agreement are set forth in the Supplemental Terms and Conditions attached hereto as Exhibit "B".

C. When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the laws of Florida or Nassau County, such day shall be

omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday, or legal holiday.

Section 9. Exhibits Incorporated

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement.

- Exhibit "A": General Terms and Conditions
- Exhibit "B": Supplemental Terms and Conditions
- Exhibit "C": Form of Performance and Payment Bonds
- Exhibit "D": Insurance Requirements
- Exhibit "F": Form of Construction Manager Application for Payment
- Exhibit "G": Form of Change Order
- Exhibit "H": Master Project Schedule Form
- Exhibit "I": Construction Manager's Staffing Schedule
- Exhibit "J": Certificate of Insurance Form
- Exhibit "K": Amendment No. 1 to Agreement between Owner and Construction Manager

Section 10. Notices.

A. All notices required or made pursuant to this Agreement by Construction Manager to Owner shall be in writing and delivered by hand or by United States Postal Service Department, first class mail, postage pre-paid, return receipt requested addressed to the following:

Public Works Director
Board of County Commissioners
213 Nassau Place
Yulee, FL 32097

B. All Notices required or made pursuant to this Agreement by Owner to Construction Manager shall be made in writing and delivered by hand or by United States Postal

Service Department, first class mail, postage pre-paid, return receipt requested addressed to the following:

Ms. Denise Ramsey
The Haskell Company
111 Riverside Avenue
Jacksonville, FL 32202-4950

C. Either party may change its above noted address by giving written notice to the other in accordance with the requirements of this Section.

Section 11. Modification.

No modification or change to this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

Section 12. Successors and Assigns.

Subject to other provisions hereof, the Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Agreement.

Section 13. Governing Law.

The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida.

Section 14. No Waiver.

The failure of Owner to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a

waiver of any such provision or provisions or of its right hereafter to enforce each and every such provision.

Section 15. Disputes

Any disputes arising under this contract, which is not disposed of by agreement, shall be decided by a mediator, who shall reduce his/her decision to writing and furnish a copy to both parties. Claims disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen from the Supreme Court approved list of mediators in the Fourth Judicial Circuit and the Cost of mediation shall be borne by the Consultant/Contractor. The decision of the mediator shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, or so grossly erroneous as to necessarily imply bad faith or not supported by substantial evidence.

Section 16. Entire Agreement.

Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations,

acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated, and superseded by the Agreement.

Section 17. Severability.

Should any provision of the Agreement be determined by a Court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

Section 18. Construction.

Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) indicated below.

OWNER:

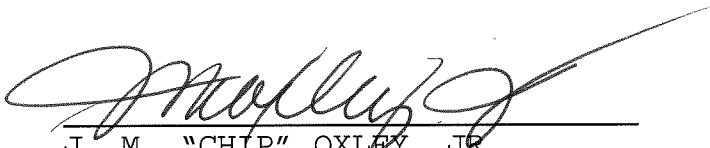
BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA



~~MICHAEL S. MULLEN~~ MARIANNE MARSHALL

Its: Chairman

ATTEST:



J. M. "CHIP" OXLEY, JR.

Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney

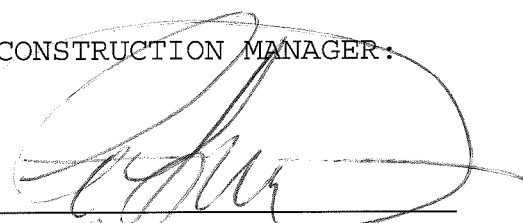


MICHAEL S. MULLEN

DATE:

12/14/01

CONSTRUCTION MANAGER:



By: CHARLES L. MITCHELL

Its: VICE PRESIDENT

DATE:

12/7/01

h: construction-management-agmt

EXHIBIT "A"

GENERAL TERMS AND CONDITIONS

1. Intent of Contract Documents
2. Investigation and Utilities
3. Schedule
4. Progress Payments
5. Payments Withheld
6. Final Payment
7. Submittals and Substitutions
8. Daily Reports, Record Contract Documents
& Meetings
9. Contract Time and Time Extensions
10. Changes in the Work
11. Claims and Disputes
12. Other Work
13. Insurance
14. Waiver of Subrogation
15. Indemnification
16. Cleanup and Protections
17. Assignment
18. Permits, Licenses and Taxes
19. Termination for Default
20. Termination for Convenience &
Right of Suspension
21. Completion
22. Warranty
23. Tests and Inspections
24. Defective Work
25. Supervision and Construction Manager's
Representative
26. Protection of Work
27. Emergencies
28. Use of Premises
29. Safety
30. Project Meetings
31. Material Safety Data Sheet
32. Auditing Rights
33. Compliance with Laws
34. Subcontracts

GENERAL TERMS AND CONDITIONS

1. INTENT OF CONTRACT DOCUMENTS.

1.1 It is the intent of the contract Documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials, or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for in the Contract Documents. When words which have a well-known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law, or regulation in affect at the time the Work is performed, except as may be otherwise specifically stated herein.

1.2 If during the performance of the Work, Construction Manager discovers a conflict, error, or discrepancy in the Contract Documents, Construction Manager immediately shall report same to Design Professional and Owner in writing, and

before proceeding with the Work affected thereby, shall obtain a verbal followed by a written interpretation or clarification from Owner's Project Manager. Construction Manager shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Construction Manager with the Contract Documents before commencing any portion of the Work.

1.3 Drawings are intended to show general arrangements, design, and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications, or other Contract Document provisions, Construction Manager shall be required to comply with the provision which is the more restrictive or stringent requirement upon Construction Manager, as determined mutually by Design Professional and Construction Manager. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished, and first quality installation shall be furnished and installed as part

of the Work, whether or not called for by the Contract Documents.

2. **INVESTIGATION AND UTILITIES.**

2.1 Construction Manager shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, legal disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the Project area as a whole; topography and ground surface conditions; nature and quality of the surface materials to be encountered; subsurface conditions with the exception of those materials not evident in the Geotechnical Reports; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Construction Manager to acquaint itself with any applicable conditions shall not relieve Construction Manager from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

2.2 Construction Manager shall locate all existing roadways, drainage facilities and utility services above, upon or under the Project site, said roadways, drainage facilities and utilities being referred to in this Section 2 as the "Utilities". Construction Manager shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Construction Manager shall schedule and coordinate its Work around any such relocation or temporary service interruption. Construction Manager shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work.

3. **SCHEDULE**

3.1 The Construction Manager shall prepare and provide the various schedules set forth in the Supplemental Terms and Conditions attached hereto as Exhibit "B". Said schedules shall include, but not be limited to, an overall progress schedule for the Project which includes the Construction Phase Services to be provided by Construction Manager hereunder, ("Master Project Schedule").

3.2 The Master Project Schedule and all other schedules required hereunder shall be updated by Construction Manager as often as is specified in the Supplemental Terms and Conditions. All such updates shall be subject to Owner's and

Design Professional's review. Construction Manager's submittal of satisfactory updates and Owner's acceptance of same shall be a condition precedent to Owner's obligation to pay Construction Manager.

4. **PROGRESS PAYMENTS.**

4.1 Prior to submitting its first monthly Application for Payment, Construction Manager shall submit to Owner and Design Professional, for their review and approval, a schedule of values based upon the lump-sum compensation to be paid Construction Manager for Design Phase Services hereunder. After its approval by Owner, that schedule of values shall be used as the basis for Construction Manager's monthly Applications for Payment with respect to Design Phase Services. The first Application for Payment shall be submitted no earlier than thirty (30) calendar days after the Design Phase Commencement Date. This schedule shall be updated and submitted each month to Owner along with a completed and notarized copy of the application for payment form attached to the Agreement as Exhibit "F".

4.2 Prior to submitting its first monthly Application for Payment after the GMP is set, Construction Manager shall submit to Owner and Design Professional, for their review and approval, a revised schedule of values based upon the Construction Management Fee and the GMP; all in C.S.I. format,

listing the major elements of the Work and the dollar value for each element. After its approval by Owner, this revised schedule of values shall be used as the basis for Construction Manager's monthly Applications for Payment thereafter. This revised schedule shall be updated and submitted each month to Owner along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit "F".

4.3 If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site, or offsite at a secured location for long lead items, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which shall be subject to Owner's satisfaction.

4.4 Construction Manager shall submit three (3) notarized original copies of its monthly Application for Payment to Nassau County Clerk of Courts ^{Design Prof} on or before the 25th day of each month for Work performed during the previous month. Invoices received after the 25th day of each month shall be considered

for payment as part of the next month's application. Upon receipt of the Construction Managers Application for Payment, the Clerk of Courts shall forward the application to the Design Professional for their review and approval. Owner shall pay Construction Manager that portion of Design Professional's Certificate for Payment which Owner approves as being due and owing Construction Manager within forty-five (45) calendar days from initial receipt of the application by The Nassau County Clerk of Courts.

4.5 Owner shall retain ten percent (10%) of the gross amount of each monthly payment request or ten percent (10%) of the portion thereof certified by Design Professional and approved by owner for payment, whichever is less. Such sum shall be accumulated and not released to Construction Manager until final payment is due.

4.6 Monthly payments to Construction Manager shall in no way imply approval or acceptance of Construction Manager's work.

4.7 Each Application for Payment shall be accompanied by a Release and Affidavit, in the form attached as Exhibit "E", showing that all materials, labor, equipment, and other bills associated with that portion of the Work previously paid by prior month's application have been paid in full. Owner shall

not be required to make payment until and unless these affidavits are furnished by Construction Manager.

5. **PAYMENT WITHHELD.**

5.1 Design Professional may decline to certify for payment or Owner may decline to approve any Certificate for Payment or portions thereof, issued by Design Professional, because of subsequently discovered evidence or subsequent inspections. Owner may nullify the whole or any part of any Certificate for Payment previously issued, and Owner may withhold any payments otherwise due Construction Manager under this Agreement or any other agreement between Owner and Construction Manager, to such extent as may be necessary in Owner's opinion to protect it from loss because of: (a) defective Work not remedied; (b) third party claims filed or reasonable evidence indicating probably filing of such claims; (c) failure of Construction Manager to make payment properly to subcontractors or for labor, materials, or equipment; (d) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount; (e) reasonable indication that the Work will not be completed within the Contract Time; (f) unsatisfactory prosecution of the Work by Construction Manager; or (g) any other material breach of the Contract Documents. If these conditions are not remedied or removed, Owner may, after seven (7) calendar days written notice, rectify the same at

Construction Manager's expense. Owner also may offset against any sums due Construction Manager the amount of any liquidated obligations of Construction Manager to Owner, whether relating to or arising out of this Agreement or any other agreement between Construction Manager and Owner.

6. **FINAL PAYMENT.**

6.1 Owner shall make final payment to Construction Manager within forty-five (45) calendar days after the work is finally accepted by Owner in accordance with Section 21.2 herein, provided that Construction Manager first, and as an explicit condition precedent to the final payment, shall have furnished Owner with a properly executed and notarized copy of the Release and Affidavit attached as Exhibit "E", as well as a duly executed copy of the Surety's consent to final payment and such other documentation that may be required by the Contract Documents.

6.2 Construction Manager's acceptance of final payment shall constitute a full waiver of any and all claims by Construction Manager against Owner arising out of this Agreement or otherwise relating to the Project, except those previously made in writing and identified by Construction Manager as unsettled at the time of the final Application for Payment. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to

enforce any obligations of Construction Manager hereunder or to the recovery of damages for defective Work not discovered by Owner or Design Professional at the time of final inspection.

7. **SUBMITTALS AND SUBSTITUTIONS.**

7.1 Construction Manager shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Construction Manager shall submit all such materials at its own expense and in such form and manner as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof.

7.2 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a propriety item or the name of a particular supplier, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers will be accepted by Owner and Design Professional if sufficient information is submitted by Construction Manager to allow Owner and Design Professional to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Owner

from anyone other than Construction Manager, and all such requests must be submitted by Construction Manager to Design Professional for approval by Owner.

7.3 If Construction Manager wishes to furnish or use a substitute item of material or equipment, Construction Manager shall make application to Design Professional for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Construction Manager's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair, and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will

result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Design Professional in evaluating the proposed substitute. Design Professional may require Construction Manager to furnish at Construction Manager's expense additional data about the proposed substitute.

7.4 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by Contract Documents, Construction Manager may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction acceptable to Design Professional, if Construction Manager submits sufficient information to allow Design Professional to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by Design Professional shall be the same as those provided herein for substitute materials and equipment.

7.5 Design Professional shall be allowed a reasonable time within which to evaluate each proposed substitute. No substitute shall be ordered, installed or utilized without Owner's and Design Professional's prior written acceptance which shall be evidenced by either a Change Order or an approved submittal. Owner may require Construction Manager to

furnish at Construction Manager's expense a special performance guarantee or other surety with respect to any substitute. Design Professional will record time required by Design Professional and Design Professional's consultants in evaluating substitutions proposed by Construction Manager and making changes in the Contract Documents occasioned thereby. Whether or not Owner accepts a proposed substitute, Construction Manager shall reimburse Owner for charges of Design Professional and Design Professional's consultants for evaluating each proposed substitute.

8. **DAILY REPORTS, RECORD CONTRACT DOCUMENTS AND MEETINGS.**

8.1 Construction Manager shall prepare, maintain and submit to Design Professional and Owner, for their review and approval, the various logs, reports, and schedules set forth in the Supplemental Terms and Conditions attached hereto as Exhibit "B". The Construction Manager's complete performance of its obligation to prepare, maintain, and submit these logs, reports, and schedules is a condition precedent to Owner's obligation hereunder to make any payments to Construction Manager. These logs, reports, and schedules shall not constitute nor take the place of any notice required to be given by Construction Manager to Owner or Design Professional pursuant to the Contract Documents.

8.2 Construction Manager shall maintain in a safe place at the Project site one record copy and one permit set of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Work Directive Changes, and Field Orders, as well as all written interpretations and clarifications issued by Design Professional, in good order and annotated to show all changes made during construction. The record Contract Documents shall be continuously updated by Construction Manager throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Changes Orders, Work Directive Changes and Field Orders, and all concealed and buried installations of piping, conduit and utility services. As a condition precedent to Owner's obligation to pay Construction Manager, Construction Manager shall provide evidence, satisfactory to owner and Design Professional, that Construction Manager is fulfilling its obligation to continuously update the record Contract Documents. All buried and concealed items, both inside and outside the Project site, as installed by the Construction Manager, shall be accurately located on the record Contract Documents as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The record Contract Documents shall be clean and all changes,

corrections, and dimensions shall be given in a neat and legible manner in a contrasting color. The record Contract Documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to owner and Design Professional for reference. Upon completion of the Work and as a condition precedent to Construction Manager's entitlement to final payment, the record Contract Documents, samples, and shop drawings shall be delivered to Design Professional by Construction Manager for Owner.

8.3 Construction Manager shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, or such longer period of time as may be required by law, whichever is later. Owner, or any duly authorized agents or representatives of Owner, shall have the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the period noted above in which the records are to be retained; provided, however, such activity shall be conducted only during normal business hours.

9. CONTRACT TIME AND TIME EXTENSIONS.

9.1 Construction Manager shall diligently pursue the completion of the Work and coordinate the Work being done on

the Project by its subcontractors and materialmen, as well as coordinating its Work with all work of others at the Project site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Construction Manager. Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, and the coordination of Owner's suppliers and contractors as set forth in Paragraph 12.2. herein.

9.2 Should Construction Manager be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Construction Manager, and not due to its fault or neglect, including, but not restricted to, acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes, lockouts, Construction Manager shall notify Owner and Design Professional in writing within thirty (30) calendar days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Construction Manager may have had to request a time extension. In the event of unusually severe weather conditions by comparison with the ten-year Nassau County, Florida average not reasonably anticipatable, Construction Manager shall notify

Owner and Design Professional in writing within thirty (30) calendar days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Construction Manager may have had to request a time extension.

9.3 No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which Owner and Design Professional may be responsible, in whole or in part, shall relieve Construction Manager of his duty to perform or give rise to any right to damages or additional compensation from Owner. Construction Manager expressly acknowledges and agrees that it shall receive no damages for delay. Construction Manager's sole remedy, if any, against Owner will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision.

10. CHANGES IN THE WORK.

10.1 Owner shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, Construction Manager shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an

emergency endangering life or property, or as expressly set forth herein, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to Construction Manager for any increased compensation without such written order. No officer, employee, or agent of Owner is authorized to direct any extra or changed work orally.

10.2 A Change Order, in the form attached as Exhibit "G" to this Agreement, shall be prepared by the Construction Manager, reviewed by Design Professional and Owner, and executed promptly by the parties after an agreement is reached between Construction Manager and Owner concerning the requested changes. Construction Manager shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as Owner and Construction Manager shall mutually agree.

10.3 If Owner and Construction Manager are unable to agree on a Change Order for the requested change, Construction Manager shall, nevertheless, promptly perform the change as directed by Owner in a written Work Directive Change. In that event, the Contract Amount and Contract Time shall be adjusted as directed by Owner. If Construction Manager disagrees with Owner's adjustment determination, Construction Manager must make a claim pursuant to Section 11. of these General

Conditions or else be deemed to have waived any claim it might otherwise have had on that matter.

10.4 In the event a requested change is approved by Owner which results in an increase to the Contract Amount, a Change Order shall be issued which increases the GMP by the amount of the Construction Manager's actual and reasonable direct Cost of the Work. In the event such change work is performed by a subcontractor, a maximum ten percent (10%) markup for all overhead and profit for all subcontractors' and sub-subcontractors' direct labor and material costs and actual equipment costs shall be permitted. Construction Manager shall not be entitled to any mark-up for Change Order work, nor shall the Construction Management Fee be increased as a result of any Change Order work. Provided, however, if at the time final payment is made to Construction Manager the total Cost of the Work has been increased by approved Change Orders in an amount in excess of one hundred thousand dollars (\$100,000.00) over the GMP as originally set by Construction Manager and Owner, Construction Manager shall be entitled to an increase to the Construction Management Fee in the amount of five and one quarter percent (5¼%) of the amount of the Cost of the Work that exceeds the sum of one hundred thousand dollars (\$100,000.00) above the GMP.

10.5 Owner shall have the right to conduct an audit of Construction Manager's books and records to verify the accuracy of Construction Manager's claim with respect to Construction Manager's costs associated with any Change Order. Cost of Owner's audit personnel is to be borne by the Owner.

11. CLAIMS AND DISPUTES.

11.1 A Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, execution of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between Owner and Construction Manager arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim.

11.2 The Design Professional shall be in the first instance the interpreter of the requirements of the Construction Documents. The Owner's Project Manager shall render opinions on all claims of the Construction Manager relating to the execution and progress of the Work and on all other matters or questions related thereto. The Design Professional's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Construction Documents. The Design Professional shall review

for comment any and all professional requests, supplemental drawings and information, substitutions and change orders.

11.3 Claims by Construction Manager shall be made in writing to Owner and Design Professional within seven (7) calendar days after the first day of the event giving rise to such Claim or else Construction Manager shall be deemed to have waived the Claim. Written supporting data shall be submitted to Owner and Design Professional within fifteen (15) calendar days after the occurrence of the event, unless Owner grants additional time in writing, or else Construction Manager shall be deemed to have waived the Claim. All claims shall be priced in accordance with the provisions of Subsection 10.4.

11.4 Construction Manager shall proceed diligently with its performance as directed by Owner, regardless of any pending Claim, action, suit, or administrative proceeding, unless otherwise agreed to by owner in writing. Owner shall continue to make payments in accordance with Contract Documents during the pendency of any Claim.

12. OTHER WORK.

12.1 Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given

to Construction Manager prior to starting any such other work. If Construction Manager believes that such performance will involve additional expense to Construction Manager or require additional time, Construction Manager shall send written notice of that fact to Owner and Design Professional within seven (7) calendar days of being notified of the other work. If Construction Manager fails to send the above required seven (7) calendar days notice, Construction Manager will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract time, or adjustment to the Contract Amount.

12.2 Construction Manager shall afford each utility owner and other contractor who is a party to a such direct contract (or Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Construction Manager shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Construction Manager shall not endanger any work of others by cutting, excavating or otherwise altering their work and will not cut or alter their work without the written

consent of the Owner and the others whose work will be affected. The duties and responsibilities of Construction Manager under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Construction Manager in said direct contracts between Owner and such utility owners and other contractors.

12.3 If any part of Construction Manager's Work depends for proper execution or results upon the work of any other contractor or utility owner (or Owner), Construction Manager shall inspect and promptly report to Design Professional and Owner in writing any delays, defects, or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Construction Manager's failure to report will constitute an acceptance of the other work as fit and property for integration with Construction Manager's Work.

13. INSURANCE

13.1 During the term of this Agreement, the Construction Manager shall provide, pay for, and maintain with companies satisfactory to the Owner, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance

companies registered with the State of Florida. Promptly after written Notice of Award is issued by the Owner, the insurance coverages and limits required must be evidenced by properly executed Certificates of Insurance on the form which is attached hereto and made a part hereof as Exhibit "J". The Certificates must be personally, manually signed by the Authorized Representatives of the insurance company/companies shown on the Certificates with proof that he/she is an authorized representative thereof. In addition, certified, true, and exact copies of all insurance policies required shall be provided to the Owner. These Certificates and policies shall contain provisions that ninety (90) calendar days written notice by registered or certified mail shall be given the Owner of any cancellation, intent not to renew, or reduction in the policies' coverages, except in the application of the Aggregate Limits Provisions. Construction Manager also shall notify Owner, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal, or material change in coverages or limits received by Construction Manager from its insurer, and nothing contained herein shall relieve Construction Manager of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy, the Construction Manager shall

immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

13.2 All insurance policies required by this Agreement shall include the following provisions and conditions by endorsement to the policies:

13.2.1 The term "Nassau County" shall include Nassau County Board of County Commissioners, Nassau County Clerk of Courts, and all of its employees and Commissioners thereof in their official capacity, and /or while acting on behalf of Nassau County.

13.2.2 All insurance policies, other than the General Liability policy and the Workers Compensation policy, provided by Construction Manager to meet the requirements of this Agreement shall name Nassau County, as that name is defined in subparagraph 13.2.1 above, as an additional insured as to the operations of the Construction Manager under the Contract Documents and shall contain a severability of interests provisions.

13.2.3 Companies issuing the insurance policy or policies shall have no recourse against Owner for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Construction Manager.

13.2.4 All insurance coverages of the Construction Manager shall be primary to any insurance or self-insurance

program carried by the Owner applicable to this Project, and the "Other Insurance" provisions of any policies obtained by Construction Manager shall not apply to any insurance or self-insurance program carried by Owner applicable to this Project.

13.3 The acceptance by the Owner of any Certificate of Insurance for this Project evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by the Owner that the insurance requirements have been met or that the insurance policies shown on the Certificates of Insurance are in compliance with the requirements of this Agreement.

13.4 No work shall commence at the Project site unless and until the required Certificates of Insurance, as well as true and exact copies of all insurance policies, are received and the written Notice to Proceed is issued to the Construction Manager by the Owner.

13.5 Before starting and until acceptance of the work by Owner, Construction Manager shall procure and maintain insurance of the types and to the limits specified in Exhibit "D", "Insurance Requirements", which is attached hereto and made apart hereof. Construction Manager shall require each of its subcontractors to procure and maintain, until the completion of that subcontractor's work, insurance of the types and to the limits specified in Exhibit "D", unless such

insurance requirement for the subcontractor is expressly waived in writing by the Owner.

13.6 If any insurance provided pursuant to this Agreement expires prior to the completion of the Work, renewal Certificates of Insurance and certified, true copies of the renewal policies, shall be furnished to Owner thirty (30) calendar days prior to the date of expiration.

13.7 Should at any time the Construction Manager not maintain the insurance coverages required in this Agreement, the Owner may cancel the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the Construction Manager for such coverages purchased. The Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased, or the insurance company/companies used. The decision of the Owner to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

13.8 Construction Manager shall immediately submit to Owner and Design Professional a copy of all accident reports arising out of any injuries to its employees or those of any firm or individual to whom it may have subcontracted a portion of the Work, or any personal injuries or property damages arising or alleged to have arisen on account of any work by Construction Manager under the Contract Documents.

13.9 The Owner shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or subcontractor providing such insurance.

14. WAIVER OF SUBROGATION

14.1 The Owner and Construction Manager waive all rights against each other for damages caused by perils covered by insurance provided under Section 13. to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

14.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

14.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

14.4 If the policies of insurance referred to in this Section require an endorsement to provide for continued coverage, where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed. Failure to obtain property endorsement mollifies the waiver of subrogation.

15. INDEMINIFICATION.

15.1 Construction Manager agrees to save harmless, indemnify, and defend Owner and its agents, officers, and employees from any and all claims, losses, penalties, demands, judgments, and costs of suit, including, but not limited to, worker's compensation claims, and including attorneys' fees and paralegals' fees, for any expense, damage, or liability incurred by any of them, whether for personal injury, property damage, direct or consequential damages, or economic loss, arising directly or indirectly on account of or in connection with the Work performed by Construction Manager under this Agreement or by any person, firm, or corporation to whom any portion of the Work is subcontracted by Construction Manager or resulting from the use by Construction Manager, or by any one for whom Construction Manager is legally liable, or any materials, tools, machinery, or other property of Owner. This provision is intended to apply even if the injury or damage is caused in whole or in part by any act, omission, or default of

Owner or its consultants, agents, officers, and employees with the exception of intentional acts. Owner and Construction Manager agree the first \$100.00 of the Contract Amount paid by Owner to Construction Manager shall be given as separate consideration for this indemnification, and any other indemnification of Owner by Construction Manager provided for within the Contract Documents, the sufficiency of such separate consideration being acknowledged by Construction Manager by Construction Manager's execution of the Agreement.

16. CLEANUP AND PROTECTIONS.

16.1 Construction Manager agrees to keep the Project site clean at all times of debris, rubbish, and waste materials arising out of the Work. At the completion of the Work, Construction Manager shall remove all debris, rubbish, and waste materials from and about the Project site, as well as all tools, appliances, construction equipment and machinery, and surface materials, and shall leave the Project site clean and ready for occupancy by Owner.

16.2 Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees, and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Construction Manager from damage during the prosecution of the Work. Any such improvements so

damaged shall be restored by Construction Manager to the condition equal to that existing at the time of Construction Manager's commencement of the Work.

17. ASSIGNMENT.

17.1 Construction Manager shall not assign this Agreement or any part thereof, without the prior consent in writing of Owner. If Construction Manager does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward Construction Manager all of the obligations and responsibilities that Construction has assumed toward Owner.

18. PERMITS, LICENSES, AND TAXES.

18.1 All permits and licenses necessary for the prosecution of the Work shall be procured and paid for by Construction Manager, unless specified otherwise in this Agreement. If Construction Manager performs any Work without obtaining, or contrary to, such permits or licenses, Construction Manager shall bear all costs arising therefrom. Construction Manager shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

18.2 Construction Manager shall pay all sales, consumer, use, and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work.

19. TERMINATION FOR DEFAULT.

19.1 Construction Manager shall be considered in material default of the Agreement and such default shall be considered cause for Owner to terminate the Agreement, in whole or in part, as further set forth in this Section, if Construction Manager: (1) fails to begin the work under the Contract documents within the time specified herein; or (2) fails to properly and timely perform the Work as provided for in the approved Master Project Schedule; or (3) perform the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work; or (5) fails to resume Work which has been suspended within seven (7) calendar days after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) calendar days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules, or regulations with respect to the Work; or (10) materially breaches any other provision of the Contract Documents.

19.2 If Owner determines that Construction Manager is in default under this Agreement, Owner shall notify

Construction Manager in writing of Construction Manager's default(s). If Owner determines that Construction Manager has not remedied and cured the default(s) within seven (7) calendar days following receipt by Construction Manager of said written notice, then Owner, at its option, without releasing or waiving its rights and remedies against Construction Manager's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Construction Manager's right to proceed under the Agreement, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Construction Manager, take assignments of any Construction Manager's subcontracts and purchase orders, and complete all or any portion of Construction Manager's Work by whatever means, method, or agency which Owner, in its sole discretion, may choose. In making either the initial determination that Construction Manager is in default under this Agreement, or the subsequent determination that Construction Manager has failed to satisfactorily cure its default, Owner may rely solely upon the Design Professional's and/or Owner's Project Manager's certification to Owner that, in the Design Professional's and/or Owner's Project Manager's opinion, the Construction Manager is in default, or has failed to satisfactorily cure its default.

19.3 If Owner deems any of the foregoing remedies necessary, Construction Manager agrees that it shall not be entitled to receive any further payments hereunder until after the Project is completed. All monies expended and all of the costs, losses, damages, and extra expenses, including all management, administrative, and other overhead and other direct and indirect expenses (including Design Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the unpaid balance of the Contract Amount, Construction Manager agrees to pay promptly to Owner on demand the full amount of such excess, including costs of collection, attorney's fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures, and damages incurred by owner to complete the Work, Construction Manager shall not be entitled to any portion of such excess. Any amounts to be paid to Owner by Construction Manager pursuant to this Paragraph 19.3 shall be certified by Design Professional, upon application, and this obligation for payment shall survive termination of the Agreement.

19.4 The liability of Construction Manager hereunder shall extend to and include the full amount of any and all sums paid, expenses, and losses incurred, damages sustained, and

obligations assumed by Owner in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies and other items therefore, or re-letting the Work, and in settlement, discharge, or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder.

19.5 If, after notice of termination of Construction Manager's right to proceed pursuant to this Section, it is determined for any reason that Construction Manager was not in default, or that is default was excusable, or that Owner is not entitled to the remedies against Construction Manager provided herein, then Construction Manager's remedies against Owner shall be the same as and limited to those afforded Construction Manager under Section 20 below.

**20. TERMINATION FOR CONVENIENCE AND RIGHT OF
SUSPENSION.**

20.1 Owner shall have the right to terminate this Agreement without cause upon seven (7) calendar days written notice to Construction Manager. In the event of such termination for convenience, Construction Manager's recovery against Owner shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses

incurred, but Construction Manager shall not be entitled to any other or further recovery against Owner, including, but not limited to, damages or any anticipated profit on portion of the Work not performed.

20.2 Owner shall have the right to suspend all or any portions of the Work upon giving Construction Manager seven (7) calendar days prior written notice of such suspension. If all or any portion of the Work is so suspended, Construction Manager's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in the Contract Documents. In no event shall Construction Manager be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds four (4) months, Construction Manager shall have the right to terminate the Agreement with respect to that portion of the Work which is subject to the ordered suspension. If the entire project is suspended at the Owner's convenience, Construction Manager is entitled to an extension of time and General Conditions.

21. COMPLETION.

21.1 When the entire Work (or any portion thereof designated in writing by Owner) is ready for its intended use, Construction Manager shall notify Owner and Design Professional in writing that the entire Work (or such designated portion) is

substantially complete and request that Design Professional issue a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion). Said written notice from Construction Manager shall include a list of all items of Work to be completed or corrected by Construction Manager. Within a reasonable time thereafter, Owner, Construction Manager, and Design Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner and Design Professional do not consider the Work (or designated portion) substantially complete, Design Professional shall notify Construction Manager in writing giving the reasons therefore. If Owner and Design Professional consider the Work (or designated portion) substantially complete, Design Professional shall prepare and deliver to Construction Manager a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion which shall fix the date Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by Construction Manager and include a tentative punchlist of items to be completed or corrected by Construction Manager before final payment. Owner shall have the right to exclude Construction Manager from the Work and Project site (or designated portion thereof) after the date of substantial Completion (or Partial Substantial Completion), but Owner shall

allow Construction Manager reasonable access to complete or correct items on the tentative punchlist.

21.2 Upon receipt of written certification by Construction Manager that the Work is completed in accordance with the Contract Documents and is ready for final inspection and acceptance and upon receipt of a final Application for Payment, Design Professional shall promptly make such inspection, and, if he finds the Work acceptable and fully performed under the Contract Documents, he shall promptly issue a final Certificate for Payment, stating that, to the best of his knowledge, information, and belief, and on the basis of his observations and inspections: (i) the Work has been completed in accordance with the terms and conditions of the Contract Documents; (ii) the entire balance found to be due Construction Manager, and noted in the Final Certificate for Payment, is due and payable; and (iii) the conditions precedent to Construction Manager's entitlement to final payment hereafter stated have been satisfied. Neither the final payment nor the retainage shall become due and payable until Construction Manager submits: (1) the final Release and Affidavit in the form attached as Exhibit "E", (2) consent of the surety to final payment, and (3) if required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases, and waivers of liens, arising out of the Contract

Documents, to the extent and in such form as may be designated by owner. Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Design Professional may have issued his recommendations. Unless and until Owner is completely satisfied, neither the final payment nor the retainage shall become due and payable.

22. WARRANTY.

22.1 Construction Manager shall obtain and assign to Owner all express warranties given to Construction Manager or any subcontractors by any materialmen supplying materials, equipment, or fixtures to be incorporated into the Project. Construction Manager warrants to Owner that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Construction Manager further warrants to Owner that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers, or processors except as otherwise provided for in the Contract Documents. If, within two (2) years after final completion, any Work is found to be defective or not in

conformance with the Contract Documents, Construction Manager shall correct it promptly after receipt of written notice from Owner. Construction Manager shall also be responsible for and pay for replacement or repair of adjacent materials or Work which may be damaged as a result of such replacement or repair. These warranties are in addition to those implied warranties to which Owner is entitled as a matter of law. Construction Manager shall conduct, jointly with Owner and Design Professional, a warranty inspection one (1) year after the date of final completion.

23. TESTS AND INSPECTIONS.

23.1 Owner, Design Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection, and testing. Construction Manager shall provide proper, safe conditions for such access. Construction Manager shall provide Design Professional with timely notice of readiness of the Work for all required inspections, tests, or approvals.

23.2 If the Contract Documents or any codes, laws, ordinances, rules, or regulations of any public authority having jurisdiction over the Project requires any portion of

the Work to be specifically inspected, tested, or approved, Construction Manager shall assume full responsibility therefore, pay all costs in connection therewith and furnish Design Professional the required certificates of inspection, testing, or approval. All inspections, tests, or approvals shall be performed in a manner and by organizations acceptable to owner and Design Professional.

23.3 If any Work that is to be inspected, tested, or approved pursuant to the Contract Documents is covered without such inspection, testing, or approval having been satisfactorily obtained by Construction Manager and without obtaining the written concurrence from Building Official, such Work must, if requested by Building Official, be uncovered for observation. Such uncovering shall be at Construction Manager's expense. If any Work is covered contrary to written directions from Building Official, such Work must, if requested by Building Official, be uncovered for Building Official's observation and be replaced at Construction Manager's sole expense.

23.4 Owner shall charge to Construction Manager and may deduct from any payments due Construction Manager all engineering and inspection expenses incurred by Owner in connection with any overtime work. Such overtime work consisting of any work during construction period beyond the

regular eight (8) hour day and for any work performed on Saturday, Sunday, or holidays.

23.5 Neither observations by Design Professional nor inspections, tests, or approvals by others shall relieve Construction Manager from Construction Manager's obligation to perform the Work in accordance with the Contract Documents.

24. DEFECTIVE WORK.

24.1 Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. If required by Owner or Design Professional, Construction Manager shall, as directed, either correct all defective Work, whether or not fabricated, installed, or completed, or, if the defective Work has been rejected by Owner or Design Professional, remove it from the site and replace it with non-defective Work. Construction Manager shall bear all direct, indirect, and consequential costs of such correction or removal (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals) made necessary thereby, and shall hold Owner and Design Professional harmless for same.

24.2 If Owner or Design Professional consider it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others, Construction Manager, at Design Professional's or Owner's request, shall uncover, expose, or otherwise make available for observation,

inspection, or tests as Owner or Design Professional may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, Construction Manager shall bear all direct, indirect, and consequential costs of such uncovering, exposure, observation, inspection, and testing, and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Construction Manager shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction.

24.3 If any portion of the Work is defective, or Construction Manager fails to supply sufficient skilled workers with suitable materials or equipment, or fails to finish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Design Professional may order Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Design Professional to stop the Work shall not give rise to any duty on the part of Design

Professional to exercise this right for the benefit of Construction Manager or any other party.

24.4 Should Owner determine, at its sole opinion, it is in Owner's best interest to accept defective Work, the Owner may do so. Construction Manger shall bear all direct, indirect, and consequential costs attributable to Owner's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Amount. If Owner accepts such defective Work after final payment, Construction Manager shall promptly pay Owner an appropriate amount to adequately compensate Owner for its acceptance of the Defective Work.

24.5 If Construction Manager fails, within a reasonable time after the written notice from Owner or Design Professional, to correct defective Work or to remove and replace rejected defective Work as required by Owner or Design Professional, or if Construction Manager fails to perform the Work in accordance with the Contract Documents, or if Construction Manager fails to comply with any of the provisions of the contract documents, Owner may, after seven (7) calendar days written notice to Construction Manager, correct and remedy

any such deficiency. To the extent necessary to complete corrective and remedial action, Owner may exclude Construction Manager from any or all of the Project site, take possession of all or any part of the Work and suspend Construction Manager's services related thereto, take possession of Construction Manager's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner has paid Construction Manager but which are stored elsewhere. Construction Manager shall allow Owner, Design Professional, and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable Owner to exercise the rights and remedies under this paragraph. All direct, indirect, and consequential costs of Owner in exercising such rights and remedies shall be charged against Construction Manager, and a Change Order shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect, and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys, and other professionals, all court and arbitration/mediation costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of Construction Manager's

defective Work. Construction Manager shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

25. SUPERVISION AND CONSTRUCTION MANAGER'S REPRESENTATIVE.

25.1 Construction Manager shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Construction Manager shall be responsible to see that the finished Work complies accurately with the Contract Documents. Construction Manager shall keep on the Work at all times during its progress a competent resident representative who shall not be replaced without prior written notice to Owner and Design Professional except under extraordinary circumstances. The representative shall have authority to act on behalf of Construction Manager. All communications given to the representative shall be as binding as if given to Construction Manager. Owner shall have the right to direct Construction Manager to remove and replace its Project representative or any other employee of Construction Manager from this Project with or without cause.

26. PROTECTION OF WORK.

26.1 Construction Manager shall fully protect the Work from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. If Construction Manager or any one for whom Construction Manager is legally liable for is responsible for any loss or damage to the Work, or other work or materials of Owner or Owner's separate contractors, Construction Manager shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Construction Manager.

26.2 Construction Manager shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Construction Manager subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

26.3 Construction Manager shall not disturb any benchmark established by Owner with respect to the Project. If Construction Manager, or its subcontractors, agents, or anyone for whom Construction Manager is legally liable, disturbs Owner's benchmarks, Construction Manager shall

immediately notify Owner and Design Professional. Owner shall have the benchmarks re-established and Construction Manager shall be liable for all Costs incurred by Owner associated therewith.

27. EMERGENCIES.

27.1 In the event of an emergency affecting the safety or protection of persons or the Work or property at the Project site or adjacent thereto, Construction Manager, without special instruction or authorization from Owner or Design Professional is obligated to act to prevent threatened damage, injury, or loss. Construction Manager shall give Owner and Design Professional written notice within forty-eight (48) hours after the occurrence of the emergency, if Construction Manager believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Design Professional determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the

consequences of the changes or variations. If Construction Manager fails to provide the forty-eight (48) hour written notice noted above, Construction Manager shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time.

28. USE OF PREMISES.

28.1 Construction Manager shall confine all construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other lands and areas permitted by law, rights of way, permits and easements, and shall not unreasonably encumber the Project site with construction equipment or other material or equipment. Construction Manager shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the Work.

29. SAFETY.

29.1 Construction Manager shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Construction Manager shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss, to:

29.1.1 All employees on the Work and other persons and/or organizations who may be affected thereby;

29.1.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site; and

29.1.3 Other property on Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and any underground structures or improvements not designated for removal, relocation, or replacement in the Contract Documents.

29.2 Construction Manger shall comply with all applicable codes, laws, ordinances, rules, and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage,

injury, or loss. Construction Manager shall erect and maintain all necessary safeguards for such safety and protection. Construction Manager shall notify owners of adjacent property and of underground structures and improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, or replacement of their property. Construction Manager's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by Owner has occurred.

29.3 Construction Manager shall designate a responsible representative at the Project site whose duty shall be the prevention of accidents. This person shall not be Construction Manager's superintendent unless otherwise designated in writing by Construction Manager to Owner.

30. PROJECT MEETINGS.

Prior to the commencement of Work, Construction Manager shall attend a pre-construction conference with Owner and Design Professional and others as appropriate to discuss the Master Project Schedule, procedures for handling shop drawings and other submittals, and for processing Applications for

Payment, and to establish a working understanding among the parties as to the Work. During the prosecution of the Work, Construction Manager shall attend any and all meetings convened by owner or Design Professional with respect to the Project, when directed to do so by Owner or Design Professional. Construction Manager shall have its subcontractors and suppliers attend all such meetings (including the pre-construction conference) as may be directed by Owner or Design Professional.

31. MATERIAL SAFETY DATA SHEET.

If any chemicals, materials, or products containing toxic substances, as defined by Chapter 442, Florida Statutes, are contained in the products used on site or incorporated into the construction as a result of this bid, by the Construction Manager or any of its subcontractors, the Construction Manager shall provide to the Design Professional and Owner, a Material Safety Data Sheet at the time of each delivery or new use of a product.

32. AUDITING RIGHTS.

The Owner reserves the privilege of auditing the Construction Manager's and any subcontractor's records, as such records relate to the purchase of materials for and construction of the project.

33.

COMPLIANCE WITH LAWS.

Construction Manager agrees to comply, at its own expense, with all federal, state, and local laws, codes, statutes, ordinances, rules, administrative orders, regulations, and requirements applicable to the Project, including, but not limited to, those dealing with safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes). If Construction Manager observes that the Contract Documents are at variance therewith, it shall promptly notify Owner and Design Professional in writing.

34. SUBCONTRACTS.

34.1 A subcontractor is a person or entity who has a direct contract with the Construction Manager to perform a portion of the Work.

34.2 Unless otherwise stated in the Contract Documents, the Construction Manager, as soon as practical after the Notice to Proceed is issued for the Construction Phase Services, shall furnish in writing to Owner, through the Design Professional, the names of the subcontractors for each portion of the Work. The Construction Manager shall not contract with any subcontractor to whom the Owner has made reasonable and timely objection. Construction

Manager shall not be required to contract with anyone to whom the Construction Manager has made reasonable objection. Subcontracts between the Construction Manager and subcontractors shall (1) require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume towards the Construction Manager all the obligations and responsibility which the Construction Manager, by the Contract Documents, assumes towards the Owner and Design Professional, and (2) provide for assignment of those subcontracts from Construction Manager to Owner at the election of Owner upon termination of Construction Manager. The Construction Manager shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Paragraph 34.2 and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall

similarly make copies of such documents available to his sub-subcontractors.

34.3 On all subcontracts where the bid exceeds \$200,000.00, the subcontractor must provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Insurance. If the Construction Manager wishes to award subcontracts to contractors unable to supply this bonding, he may request special authorization to do so. Upon providing justifiable background information, such authorization shall not be withheld unreasonably.

34.3.1 Workforce - The subcontractor must agree to perform no less than fifteen percent (15%) of the Project construction work utilizing its own employees.

34.3.2 Subcontractor experience - The subcontractor must have successfully completed no less than two (2) projects of similar size and complexity within the last five (5) years.

34.3.3 Supervision - The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (general concrete forming and placement, masonry, mechanical, plumbing, electrical, and roofing) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman, and schedules at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two (2) years within the last five (5) years. The subcontractor shall include a resume of experience for each employee identified by him to supervise and schedule his work.

34.3.4 All subcontracts shall provide:

34.3.4.1 LIMITATION OF REMEDY - NO DAMAGES FOR DELAY. That the subcontractor's exclusive remedy for delays in the

performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Design Professional or attributable to the Owner or Design Professional and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work, the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than ten percent (10%) for overhead and profit and bond costs.

The subcontract shall require the subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses, or additional compensation.

34.3.4.2 Each subcontract shall require that any claims by subcontractor for delay

or additional cost must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

34.4 The Construction Manager shall not employ the Civil Engineering firm of record to perform any survey work that is required under the terms of the contract.

34.5 The Construction Manager shall be responsible to the Owner for the acts and omissions of his employees and agents and his subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager.

END OF GENERAL TERMS AND CONDITIONS

EXHIBIT "B"
SUPPLEMENTAL TERMS AND CONDITIONS

The following Supplemental Terms and Conditions hereby amend, modify, and supersede in the event of a conflict with the terms of the Construction Management Agreement and the General Terms and Conditions attached thereto as Exhibit "A".

A. The Work to be provided by Construction Manager pursuant to this Agreement shall be performed essentially in two (2) phases, those phases being Design Phase Services and Construction Phase Services. Construction Manager shall review and comment upon the Construction Documents as prepared by the Design Professional. The scope of Construction Manager's review shall include, but shall not be limited to, commentary concerning the constructability of the design. Construction Manager shall review and comment upon all documents submitted by the Design Professional to Owner with respect to constructability of said documents. After Design Professional has completed the Construction Documents, and the Owner and Construction Manager have reviewed and mutually accepted those final documents, Construction Manager, with the assistance of Design Professional, shall

develop, the GMP for the Project. Construction Manager shall submit the GMP to Owner for Owner's review and approval. In the event Construction Manager and Owner fail to reach an agreement on the GMP, Owner may elect to terminate this Agreement. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Sum attributable to the Design Phase Services earned through the date of termination; but Construction Manager shall not be entitled to any further or additional compensation from Owner, including, but not limited to, damages or lost profits on portions of the Work not performed.

B. Because the Work is to be completed in two (2) phases, the timely completion of the first phase is critical to the timely completion of the second phase and, therefore, completion of the entire Project. With respect to the Construction Phase Services, at the time the GMP is set, Owner and Construction Manager also shall set the date that portion of the Work associated with the Construction Phase Services shall be substantially completed by Construction Manager. That substantial completion date shall be established in terms of calendar days

after the Construction Phase Commencement Date. In event Construction Manager and Owner fail to reach an agreement on that substantial completion date, Owner may elect to terminate this Agreement. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Sum attributable to the Design Phase Services earned to the date of termination; but Construction Manager shall not be entitled to any further or additional compensation from Owner, including, but not limited to, damages or lost profits on portions of the Work not performed. The date of Substantial Completion of the Work (or designated portions thereof) is the date certified by Design Professional when construction is sufficiently complete, in accordance with the Contract Documents, so Owner can occupy or utilize the Work (or designated portions thereof) for the use for which it is intended. The entire Work shall be fully completed and ready for final acceptance by Owner within sixty (60) calendar days after the date to be fixed by Owner and Construction Manager for Substantial Completion pursuant to the above noted terms, as that date may be extended pursuant to other terms of this Agreement.

C. Owner and Construction Manager recognize that, since time is of the essence for this Agreement, Owner will suffer financial loss if the Work associated with the Construction Phase is not substantially completed within the time specified above, as said time may be adjusted as provided for herein. The total amount of the Owner's damages, in whole or in part, will be difficult, if not impossible, to definitely ascertain and quantify. It is hereby agreed that it is appropriate and fair that the Owner receive liquidated damages from the Construction Manager, if the Project does not actually achieve substantial completion by the substantial completion date identified for the Project. Should Construction Manager fail to substantially complete that portion of the Work within the time period noted above, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, **\$250.00** for each calendar day thereafter until substantial completion is achieved. The Project shall be deemed to be substantially completed on the date Design Professional issues a Substantial Completion Certificate pursuant to the terms hereof. Construction Manager hereby expressly waives and

relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of Owner's actual damages at the time of contracting if Construction Manager fails to substantially complete the Work in a timely manner.

D. Construction Manager agrees and understands that funding limitations exist and that the expenditure of funds must be spread over the duration of the Project at regular intervals based upon the Contract Amount.

E. If, during the performance of the Work, Construction Manager or any subcontractor, sub-subcontractor agent, employee, or any one else for whom Construction is legally liable, causes a disruption of utility service to other facilities or customers within the Project area, including, but not limited to, Florida Power & Light, BellSouth Telecommunications, Aldelphia, United Water, Construction Manager shall take all actions necessary and required to immediately restore such utility service. If Construction Manager fails to take such immediate actions, Owner shall have the right to take whatever actions it deems necessary and required to

immediately restore the disrupted utilities, and all costs incurred by Owner as a result thereof shall be reimbursed to Owner by Construction Manager within five (5) calendar days of written demand for same from Owner.

F. If Construction Manager encounters on the Project site any materials reasonably believed by Construction Manager to be hazardous, petroleum or petroleum-related products or other hazardous or toxic substances which have not been rendered harmless, Construction Manager may immediately stop Work in the area affected and shall report the condition to Owner in writing. If the Work is so stopped, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include, but not be limited to, an adjustment to the Contract Amount and Contract Time as appropriate.

G. Construction Manager shall provide the following Project Management Information System ("PMIS"), which system shall be in place for the Construction Phase services to be provided by Construction Manager pursuant to this Agreement.

1. General:

1.1. Commencing immediately after the Notice of Award is issued to Construction Manager by Owner, the Construction Manager shall implement and shall utilize throughout the life of this Contract all subsystems of the PMIS.

1.2. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the Work remaining to be accomplished, and it shall provide a sound basis for identifying variances and problems and for making management decisions.

1.3. If requested by the Owner, the Construction Manager shall conduct a comprehensive workshop in Nassau County, Florida, for participants designated by the Owner, and additional seminars as required to provide instruction with respect

to the PMIS. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of the PMIS.

1.4. The PMIS shall be described in terms of the following major subsystems:

- (a) Narrative Reporting;
- (b) Schedule Control;
- (c) Cost Control and Estimating;
- (d) Project Accounting;
- (e) Accounting and Payment; and
- (f) Action Reports.

1.5. The above reports shall be submitted at least on a monthly basis and shall accompany each monthly application for Payment.

2. Narrative Reporting Subsystem.

2.1. The Construction Manager shall prepare written reports as described hereunder. All reports shall be in 8-1/2" x 11" format.

2.2. The Narrative Reporting Subsystem shall include the following reports:

(a) A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments, and expected achievements, and any problems or delays, including code violations found by any permitting authority.

(b) A Monthly Cost Narrative describing the current construction cost estimate status of the Project.

(c) A Monthly Scheduling Narrative summarizing the current status of the overall Master Project Schedule. The report shall include an analysis of the various Project sub-schedules, as requested by the Owner, a

description of the critical path, and other analyses as necessary to compare planned performance with actual performance.

(d) A Monthly Accounting Narrative describing the current cost and payment status for the entire Project. This report shall relate current encumbrances and expenditures to the budget allocations.

(e) A Monthly Construction Progress Report during the Construction Phase summarizing the Work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries,

safety and labor relations, programs, permits, construction problems and recommendations, and plans for the succeeding month.

(f) A Daily Construction Diary during the construction Phase describing events and conditions on the site.

2.3 The Reports outlined in Subsection 2.2(a) through (e) above shall be bound with applicable computer reports and submitted monthly during Construction Phase and shall be current through the end of the preceding month. Copies shall be delivered to the Owner and the Design Professional. A bound copy of the complete diary shall be submitted to the Owner at the conclusion of the Project.

3. Narrative Reporting Subsystem.

3.1. Master Project Schedule: Prior to the submittal of its first

application for payment, the Construction Manager shall submit to Owner and Design Professional for their review and approval a Master Project Schedule in quadruplicate covering the planning and design approvals, construction and Owner occupancy of the Project. This schedule shall conform to the format outlined in Section 3.4. This schedule shall serve as the framework for the subsequent development of all detailed schedules and shall be updated monthly by the Construction Manager throughout the Project. Within fifteen (15) calendar days of the Construction Manager's submittal, the Owner and the Design Professional shall review the schedule and provide the Construction Manager a written list of corrections needed to

approve the schedule. The Construction Manager must make all corrections and resolve all comments within sixty (60) calendar days of the Construction Phase Commencement Date. If the schedule is not approved within sixty (60) calendar days of the Construction Phase Commencement Date, the Owner and Design Professional will withhold all Contract payments until the schedule is approved. The approval of the schedule by the Owner and Design Professional in no way attests to the validity of the assumptions, logic constraints, dependency relationships, resource allocations, manpower and equipment, and any other aspects of the proposed schedule. The Construction Manager is and shall remain solely responsible for the

planning and execution of the Work in order to meet Project milestones or Contract completion dates.

3.2. Construction Schedule: Within ten (10) calendar days after the Construction Phase Commencement Date, the Construction Manager shall prepare and submit to the Owner and Design Professional, for their review and approval, a Construction Schedule in quadruplicate. This schedule shall conform to the format outlined in Section 3.4. Within fifteen (15) calendar days of the Construction Manager's submittal, the Owner and the Design Professional shall review the schedule and provide the Construction Manager a written list of corrections needed to approve the schedule. The Construction Manager must make all

corrections and resolve all comments within sixty (60) calendar days of the Construction Phase Commencement Date. If the schedule is not approved within sixty (60) days of the Construction Phase Commencement Date, the Owner and Design Professional will withhold all Contract payments until the schedule is approved. The Construction Schedule shall be integrated into the Master Project Schedule. Failure of Construction Manager to develop and submit a Construction Schedule as aforesaid shall be sufficient grounds for the Owner to find the Construction Manager in substantial default hereunder and that sufficient cause exists to terminate the Agreement or to withhold any payment.

(a) Following development and submittal of the Construction Schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update, and/or revise the Construction Schedule which shall be submitted to the Owner in duplicate. No additional compensation will be due the Construction Manager for making such updates. Failure of Construction Manager to update, revise, and submit the Construction Schedule as aforesaid shall be sufficient grounds for the Owner to find the Construction Manager in substantial default hereunder and that sufficient cause exists to terminate the

Agreement or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Owner is submitted.

3.3 The Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules as required by the Owner:

(a) Pre-Bid Schedules (Sub-networks): The Construction Manager shall prepare a Construction Schedule for Work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for subcontract completion by the successful bidder. It shall show the inter-relationships between the Work of the successful bidder and that of other subcontractors, and shall

establish milestones keyed to the Project Schedule.

(b) Subcontractor Construction Schedules (Sub-networks): Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the bid packages, taking into account the Work schedule of the other subcontractors. The Construction Schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The Construction Schedule also shall show pertinent activities for material purchase orders, manpower supply, shop drawing schedules, and material delivery schedules.

(c) Occupancy Schedule: The Construction Manager shall jointly develop with the Design Professional and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training, and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy and shall be integrated into the Master Project Schedule.

3.4 Schedule Format: The Master Project Schedule and the Construction Schedule shall be planned and recorded with a Critical Path Method (CPM) schedule in the form of an activity-on-node diagram. All activity-on-node diagrams shall

include the Activity Identification, Activity Description, and the type of relationship between activities, including any lead or lag time.

(a) No activity shall have a duration greater than fifteen (15) work days or less than one (1) work day. If requested by the Owner or Design Professional, the Construction Manager shall furnish any information needed to justify the reasonableness of activity durations. Such information shall include, but not be limited to, estimated activity manpower, anticipated quantities, and production rates.

(b) Procurement shall be identified with at least two (2) activities: fabrication and delivery. Insure that all work activities that require a

submittal are preceded by submittal and approval activities.

(c) Only contractual constraints shall be shown in the schedule logic. No other restraints are allowed unless approved by the Owner or Design Professional. The disallowance of constraints includes the use of activity mandatory start and finish dates.

(d) Activities shall be identified by codes to reflect the responsible party for the accomplishment of each activity (only one party per activity), the Phase/Stage of the Project for each activity, and the Area/Location of each activity.

(e) The construction time for the entire Project, or any milestone, shall not exceed the specified Contract time. Logic or activity durations shall be revised in the event that any milestone or

Contract completion date is exceeded in the schedule.

(f) "Float" is defined as the amount of time between when an activity "can start" (the early start) and when an activity "must start" (the late start). It is understood by the Owner and the Construction Manager that float is for the exclusive use or financial benefit of Construction Manager. The Construction Manager has the full use of the float until it is depleted.

(g) The CPM schedules must be compatible with Primavera Project Planner Software, by Primavera Systems, Inc., Bala Cynwyd, PA.

(h) Initial Schedule Submittal Requirements:

- (1) Predecessor/Successor Sort
- (2) Total Float/Early Start Sort
- (3) Responsibility/Early Start Sort

- (4) Area/Early Start Sort
- (5) Logic Diagram: Produce diagram with not more than one hundred (100) activities per ANSI D (24" x 36") size sheet. Insure each sheet includes title, match data or diagram correlation, and key to identify all components used in the diagram.
- (6) Narrative discussing general approach to completion of the work.
- (7) Diskette in Primavera (P3) format.
 - (i) Schedule Update Requirements:
The Construction Manager shall update the schedules monthly to show actual, current progress. The submission date of the updates shall be determined by the Owner, as outlined in Section 3.2. The schedule updates shall be submitted within seven (7)

calendar days of the data dates. The Owner may require submission of the updated schedule on diskette prior to submission of the full update package. Should the Construction Manager fail to provide an update, the Owner may withhold payment of the current monthly progress payment until the monthly schedule update is submitted. The updates shall include:

- (1) Dates of activities' actual starts and completions.
- (2) Percent of work remaining for activities started but not completed as of the update date.
- (3) Narrative report including a listing of monthly progress, the activities that define the critical path and any changes to the path of critical activities from the

previous update, sources of delay, any potential problems, requested logic changes, and work planned for the next month.

- (4) Predecessor/Successor Sort
- (5) Total Float/Early Start Sort
- (6) Responsibility/Early Start Sort
- (7) Area/Early Start Sort
- (8) Diskette in PrimaVera (P3) format
- (9) Fragnet of logic diagram for all requested logic changes.
- (10) Updated logic diagram as required by the Owner. At a minimum, the Owner shall require a final logic diagram at the end of the Project showing the planned and actual starts and completions.
- (11) A bar chart comparison of the updated schedule to the

initial schedule. This diagram shall show actual and planned performance dates for all completed activities.

(12) All update information shall be an accurate representation of the actual Project progress.

3.5 Recovery Schedule: If the initial schedule or current updates fail to reflect the Project's actual plan or method of operation, or a contractual milestone date is more than thirty (30) days behind, the Owner may require that a recovery schedule for completion of the remaining Contract work be submitted. The Recovery Schedule must be submitted within seven (7) calendar days of the Owner's request. The Recovery schedule shall describe in detail the Construction Manager's plan to complete the remaining Contract

work by the Contract milestone date. The Recovery Schedule submitted shall meet the same requirements as the Initial Schedule. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Contract milestone date.

3.6 Change Orders: When a change order is proposed, the Construction Manager must identify all logic changes as a result of the change order. The Construction Manager shall include, as part of each change order proposal, a sketch showing all schedule logic revisions, duration changes, and the relationships to other activities in the approved Initial Schedule or current update. The logic changes required by the change order will be considered

incidental to the Construction Manager's work. No separate payment will be made.

4. Cost Control Subsystem: The operation of this subsystem shall provide sufficient timely cost data and detail to permit the Construction Manager to control and adjust the Project requirements, needs, materials, equipment, and systems by building and site elements so that the Work will be completed at a cost which, together with all other Project costs, will not exceed the GMP. Requirements of this subsystem include submissions at the establishment of the GMP.

5. Project Accounting Subsystem: This subsystem shall enable the Construction Manager to plan effectively and the Owner to monitor and control the funds available for the Project, cash flow, costs, Change Orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable, and also enable the Owner to stay informed as to the overall Project status. All reports to be generated by this subsystem shall be consistent with the Project Funding Schedule. This subsystem will be produced and updated monthly and includes the following reports:

5.1. Costs Status Report representing the budget, estimate, and based commitment (awarded subcontracts and purchase orders) for any given subcontract or budget line item. It shall show approved Change Orders for each subcontract which, when added to the base commitment, will become the total commitment. Pending Change Orders also will be shown to produce the total estimated probable cost to complete the Work.

5.2. A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.

5.3. A Detailed Status Report showing the complete activity history of each item in the Project accounting structure. It shall include the budget, estimate, and base commitment figures for each

subcontract. It shall give the Change Order history, including Change Order numbers, description, proposed and approved dollar amounts. It also shall show all pending or rejected Change Orders.

5.4. A Cash Flow Diagram showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.

5.5. A Job Ledger shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

H. Any information that is not sufficiently covered in the GMP document shall be provided to the Owner upon request.

I. Construction Manager shall provide the following review and commentary services, in addition to any other such services required by the terms of this Agreement:

1. Review, Recommendations and Warranty:

The Construction Manager shall familiarize himself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications. The Construction Manager shall make recommendations with respect to the selection of systems and materials, and cost-reducing alternatives including assistance to the Design Professional and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall address the benefits of the speed of erection and early completion of the Project. The Construction Manager shall furnish pertinent information as to the availability of materials and labor that will be required. The Construction Manager shall submit to the Owner and Design Professional such comments as may be appropriate concerning construction feasibility and practicality. The Construction Manager shall call to the Owner's and Design Professional's attention any

apparent defects in the design, drawings, and specifications, or other documents.

2. Review Reports: Within ten (10) days after submission of the GMP, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph 1 above and on factors set forth in Paragraph 6 below. Within the same ten (10) day period, the Construction Manager shall submit to the Owner, with copies to the Design Professional, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as the Construction Manager may deem appropriate, and all actions taken by the Design Professional with respect to same, any comments the Construction Manager may deem to be appropriate with respect to separating the Work into separate subcontracts, alternative materials, and any other appropriate or required comments.

AT COMPLETION OF THE CONSTRUCTION MANAGER'S REVIEW OF THE PLANS AND SPECIFICATIONS, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED BY APPROPRIATE COMMENTS PURSUANT TO THIS SECTION, THE CONSTRUCTION MANAGER SHALL WARRANT, WITHOUT ASSUMING ANY

ARCHITECTURAL OR ENGINEERING RESPONSIBILITY,
THAT THE PLANS AND SPECIFICATIONS ARE
CONSISTENT WITH EACH OTHER, PRACTICAL,
FEASIBLE, AND CONSTRUCTABLE. THE
CONSTRUCTION MANAGER SHALL WARRANT THAT THE
WORK DESCRIBED IN THE PLANS AND
SPECIFICATIONS FOR THE VARIOUS BIDDING
PACKAGES IS CONSTRUCTABLE WITHIN THE
SCHEDULED CONSTRUCTION TIME.

DISCLAIMER OF WARRANTY: THE OWNER DISCLAIMS
ANY WARRANTY THAT THE PLANS AND
SPECIFICATION FOR THE PROJECT ARE ACCURATE,
PRACTICAL, CONSISTENT OR CONSTRUCTABLE.

3. Long Lead Procurement: The
Construction Manager shall review the Project design
for the purpose of identifying long lead procurement
items (machinery, equipment, materials and supplies)
and consult with Design Professional concerning same.
When each item is identified, the Construction Manager
shall notify the subcontractors, Owner, and the Design
Professional of the required procurement and schedule.
Such information shall be included in the bid
documents and made a part of all affected
subcontracts. As soon as the Design Professional has

completed drawings and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall prepare invitations for bids. Copies are to be supplied to Owner, in advance of Construction Manager's issuing the invitation to bid, for Owner's review. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items, and advise Owner and Design Professional of any problems or prospective delays in delivery.

4. Separate Subcontracts Planning: The Construction Manager shall review the design and shall determine how it desires to divide the sequence of construction activities, and will determine the breakdown and composition of bid packages for award, based on the current Master Project Schedule, and shall supply a copy of same to Owner and Design Professional for their review. Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials,

community relations, and any other factors pertinent to saving time and costs. The Construction Manager will supply the Owner a copy of the schedule for the Owner's review and approval.

5. Interfacing:

5.1. The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate procurement of long lead items, the separate construction subcontractors and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all Work on schedule. Particular attention shall be given to provide that each bid package clearly identified the Work included in that particular separate subcontract, its schedule for start and completion, and its relationship to other separate subcontractors.

5.2. Without assuming any Design responsibilities of the Design

Professional, the Construction Manager shall include in the reports required under Paragraph 2 above comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Design Professional may arrange for necessary corrections.

6. Job-Site Facilities: The Construction Manager shall arrange for all job-site facilities as required by the Owner and necessary to enable the Construction Manager and Design Professional to perform their respective duties and to accommodate any representatives of the Owner which the Owner may choose to have present on the job, the description of which shall be finalized prior to the establishment of the GMP.

Tangible personal property, otherwise referred to as job-site facilities, include, but are not limited to, such things as trailers, toilets, typewriters, computers, and any other equipment necessary to carry on the Project.

7. Weather Protection: The Construction Manager shall ascertain what temporary enclosures, if any, of building areas, including existing facilities, should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work and to protect and secure the Work and existing facilities, in periods when extreme weather conditions are likely to be experienced.

8. Market Analysis and Stimulation of Bidder Interest:

8.1. The purpose of this subsection is to insure that the Construction Manager makes a genuine effort to stimulate interest in the Project and maximize participation of potential qualified subcontractors in the bidding process. The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project; Construction Manager shall make analysis as necessary to (i) determine and report on availability of labor, materials, equipment, potential

bidders, and possible impact of any shortages or surpluses of labor or material, and (ii) in light of such determination, make recommendations and take action as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of Work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the Contract Time.

8.2. As various bid packages are prepared for bidding, the Construction Manager shall submit to the Owner and Design Professional a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.

8.3. The Construction Manager shall carry out an active program of stimulating

interest of qualified subcontractors in bidding on the Work and of familiarizing those bidders with the requirements of this Project.

J. In addition to all other Construction Phase services required to be performed by Construction Manager pursuant to the terms of this Agreement, Construction Manager also shall provide the following services:

1. Construction Manager's Staff: The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect, and provide general direction of the Work and progress of the subcontractors. Construction Manager shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "I" to this Agreement. The Construction Manager shall not change any of those persons identified in Exhibit "I" unless mutually agreed to in writing by the Owner and Construction Manager. In such case, the Owner shall have the right to approve the qualifications of the replacement personnel.

2. Lines of Authority: The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this information to the Owner and all other affected parties, such as the code inspectors of any permitting authority, the subcontractors, and the Design Professional to provide general direction of the Work and progress of the various phases and subcontractors. The Owner and Design Professional may attend meetings between the Construction Manager and his subcontractors; however, such attendance is optional and shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontracts.

3. Solicitation of Bids:

3.1 The Construction Manager shall prepare invitations for bids for all procurement of long lead items, materials, and services, for subcontractor contracts and for site utilities. The Design Professional shall assist the Construction Manager in the preparation of the bidding information, bidding forms, and other bidding documents. The Owner shall have the right to review

invitation for bids and bid packages prior to distribution to bidders.

3.1.1 Contracts exceeding \$100,000.00, but not exceeding \$500,000.00, may be entered into by the Construction Manager with the firm who is qualified and submits the lowest proposal. The Construction Manager shall advertise these projects at least once with the last advertisement appearing at least ten (10) calendar days prior to the established bid opening time and date. Proof of publication for bid advertisement shall be provided to the Owner. These proposals shall be based on approved plans and specifications. Bids shall be received and opened publicly at the location, date, and time established in the bid advertisement.

3.1.2 Contracts exceeding \$500,000.00 shall be treated the same as described under 3.1.1 above, except that the

advertisement shall be run for at least two (2) consecutive weeks.

3.2 As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Design Professional. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Owner and Design Professional in written form.

3.3 For each separate construction subcontract, the Construction Manager shall, unless waived by Owner, conduct a pre-bid conference with prospective bidders. The Design Professional shall be invited to all such meetings. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction

of the invitation, the Construction Manager shall transmit these to the Design Professional in writing and upon receiving clarification or correction in writing shall prepare an addendum to the bidding documents, and issue same to all of the prospective bidders.

4. Quality Control: The Construction Manager shall develop and maintain a program, acceptable to the Owner and Design Professional, to assure quality control of the Work. The Construction Manager shall be responsible for and supervise the Work of all subcontractors, providing instructions to each when their portion of the Work does not conform to the requirements of the plans and specifications, and Construction Manager shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should a disagreement occur between the Construction Manager and the Design Professional over the acceptability of the Work, the Owner, in its sole discretion, shall have the right to determine the acceptability.

5. Subcontractor: The Construction Manager shall solely control the subcontractors. The Construction Manager shall negotiate all Change Orders, Field Orders, and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Design Professional of their validity and reasonableness, acting in the Owner's best interest, prior to requesting approval of each Change Order from the Owner. Before any Work is begun on any Change Order, a written authorization from the Owner must be issued. However, when there is an eminent threat to health and safety, and Owner's concurrence is impractical, the Construction Manager shall act immediately to remove the threats to health and safety and shall subsequently fully inform Owner of all such action taken. The Construction Manager shall also carefully review all shop drawings, and then forward the same to the Design Professional for review and actions. The Design Professional will transmit them back to the Construction Manager, who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a control system to promote expeditious handling. The

Construction Manager shall request the Design Professional to make interpretations of the drawings or specifications requested of him by the subcontractors and shall maintain a control system to promote timely response. The Construction Manager shall advise the Owner and Design Professional in writing which shop drawings or requests for clarification have the greatest urgency; the purpose being to enable the Owner and Design Professional to prioritize request coming from the Construction Manager. The Construction Manager shall advise the Owner and Design Professional in writing when timely response is not occurring on any of the above.

6. Permits: The Construction Manager shall secure all necessary building permits from any permitting authorities. All costs incurred by Construction Manager with respect to performing its obligations under this Paragraph 6 shall be considered a direct cost item and shall be considered reimbursable as Cost of the Work as provided for in the Agreement. The Owner shall fully cooperate with the Construction Manager where necessary.

7. Job Site Requirements:

7.1 The Construction Manager shall provide the following:

(a) Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.

(b) Maintain a roster of companies on the Project with names and telephone numbers of key personnel.

(c) Establish and enforce job rules governing parking, clean-up, use of facilities, and Worker discipline.

(d) Provide labor relations management for a harmonious, productive project.

(e) Provide and administer a safety program for the Project to meet OSHA and other governmental requirements. Monitor subcontractor compliance with that safety program.

(f) Provide and administer a quality control program as developed pursuant to the terms herein.

(g) Provide miscellaneous office supplies that support the construction

efforts, which are consumed by Construction Manager's own forces.

(h) Provide for travel to and from Construction Manager's home office to the Project site, the Temporary Courthouse Facility, and the Public Services Department as the Project requires.

7.2 Construction Manager shall provide personnel and equipment or shall arrange for separate subcontractors to provide each of the following as a direct cost item:

(a) Services of independent testing laboratories and provide the necessary testing materials to ensure conformance with the Contract Documents.

(b) Printing and distributing of all required bidding documents and shop drawings, including the sets required by any permitting authority's inspectors.

8. Job Site Administration: The Construction Manager shall provide job site administration

functions during construction to assure proper documentation, including, but not limited to, the following:

8.1 Job Meetings: Conduct a pre-construction conference with each subcontractor after award of the subcontract and prior to the start of its portion of the Work. Hold weekly progress and coordination meetings to provide for a timely completed Project. Implement procedures and assure timely submittal, expedite processing approvals, and return of shop drawings, samples, etc. Coordinate and expedite critical long lead materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Review and implement revisions to the Master Project Schedule or sub-schedules as provided herein. Monitor and promote safety requirements. In addition, Construction Manager shall arrange and conduct regular monthly

Project status meetings with the Design Professional and Owner.

Construction Manager shall use the job site meetings as a tool for the pre-planning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand.

Construction Manager shall identify party or parties responsible for following up on any problems, delay items or questions, and Construction Manager shall note the action to be taken by such party or parties. Construction Manager shall re-visit each pending item at each subsequent meeting until resolution is achieved. Construction Manager shall attempt to obtain from all present any problems or delaying event known to them for appropriate attention and resolution.

8.2 Shop Drawing Submittals/Approvals:

Provide staff to review shop drawings

and to implement procedures for submittal and transmittal to the Design Professional of such drawings for action, and closely monitor their submittal and approval process.

8.3 Material and Equipment Expediting:

Provide staff to closely monitor material and equipment deliveries, perform critically important checking and follow-up procedures on supplier commitments for all subcontractors and maintain a material and equipment-expediting log.

8.4 Payments to Subcontractors: Develop and

implement a procedure for the review, processing, and payment of applications by subcontractors for progress and final payments.

8.5 Document Interpretation: Refer all

questions for interpretation of the Contract Documents to the Design Professional in writing.

8.6 Reports and Project Site Documents:

Record the progress of the Project.

Submit written progress reports to the Owner and the Design Professional, including information on subcontractors' Work, and the percentage of completion. Keep a daily log available to Owner, the Design Professional, and any permitting authority inspectors.

8.7 Contractors Progress: Prepare periodic punch lists for subcontractors' work including unsatisfactory or incomplete items and schedules for their completion.

8.8 Substantial Completion: Ascertain when the Work or designated portions thereof are ready for the Design Professional's substantial completion inspections. From the punch lists of incomplete or unsatisfactory items prepared by Construction Manager and reviewed and supplemented by Design Professional, prepare a schedule for their completion indicating completion dates for the Owner's review. The Design

Professional will issue a certificate of Substantial Completion when the Work on the list has been accomplished and Substantial Completion has been achieved as otherwise required hereunder.

8.9 Final Completion: Monitor the subcontractors' performance on the completion of the Project and provide notice to the Owner and Design Professional that the Work is ready for final inspection. Secure and transmit to the Owner, through the Design Professional, all required guarantees, warranties, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books.

8.10 Start-Up: With the Owner's personnel, direct the check-out of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.

8.11 Record Drawings: The Construction Manager shall monitor the progress of its own forces and its subcontractors on marked up field prints which. At Project completion, Construction Manager shall provide Design Professional with marked up field prints to be developed by Design Professional into the final record drawings. The final record drawings, as prepared by the Design Professional and sealed as such, shall also be signed-off by the Construction Manager certifying that the drawings are a true and accurate record of the construction project.

9. Administrative Records: The Construction Manager shall maintain at the Project Site, originals or copies of, on a current basis, files and records such as, but not limited to, the following:

- 9.1 Subcontracts and Purchase Orders
- 9.2 Shop Drawing Submittal/Approval Logs
- 9.3 Equipment Purchase/Delivery Logs

- 9.4 Contract Drawings and Specifications
with Addenda
- 9.5 Warranties and Guarantees
- 9.6 Cost Accounting Records
- 9.7 Labor Costs
- 9.8 Material Costs
- 9.9 Equipment Costs
- 9.10 Cost Proposal Request
- 9.11 Payment Request Records
- 9.12 Meeting Minutes
- 9.13 Cost-Estimates
- 9.14 Lab Test Reports
- 9.15 Insurance Certificates and Bonds
- 9.16 Contract Changes
- 9.17 Permits
- 9.18 Material Purchase Delivery Logs
- 9.19 "As-Built" Marked Prints
- 9.20 Operating & Maintenance Instruction
- 9.21 Daily Progress Reports
- 9.22 Monthly Progress Reports
- 9.23 Correspondence Files
- 9.24 Transmittal Records
- 9.25 Inspection Reports
- 9.26 Bid/Award Information

9.27 Bid Analysis and Negotiations

9.28 Punch Lists

9.29 PMIS Schedule and Updates

9.30 Suspense (Tickler) Files of
Outstanding Requirements

The Project records shall be available at all times to the Owner and Design Professional either electronically or in hard copy form for reference or review.

10. Owner Occupancy:

10.1 The Construction Manager shall provide services that will provide for the smooth, successful, and timely occupancy of the Project by Owner. The Construction Manager shall provide consultation and Project management to facilitate Owner occupancy and provide transitional services to place the Work as completed by the subcontractors, "on line" in such conditions as will satisfy Owner's operations requirements.

10.2 The Construction Manager shall conduct the preliminary punch list inspections

with the Owner and Design Professional and shall coordinate the completion of all punch list work to be done with the Owner occupancy requirements in mind.

10.3 The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. As a minimum, the Construction Manager will provide to the Owner an operations and maintenance manual, which contains such operational and maintenance requirements. The Construction Manager shall provide operations training in equipment use for building operators.

10.4 The Construction Manager shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

10.5 The Construction Manager shall continuously review "As-Built" Drawings, and mark up progress prints to provide as much accuracy as possible.

END OF SUPPLEMENTAL TERMS AND CONDITIONS

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EXHIBIT "C"

FORM OF PERFORMANCE AND PAYMENT BONDS

BOND NO. _____

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That _____, as Principal, and _____, as Surety, located at _____ (Business Address) are held and firmly bound to the **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**, a political subdivision of the State of Florida, as Owner, in the sum of \$ _____ for the payment whereof, we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the _____ day of _____, 20__, with Owner for _____, in accordance with drawings and specifications, which contract is incorporated by reference and made a part hereof, and is referred to as the "Contract".

THE CONDITION OF THIS BOND is that if Principal:

1. Promptly makes payment to all lienors as defined in Section 713.01(16), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the Work provided for in the Contract; and

2. Pays the Owner for all losses, damages, expenses, costs, and attorneys' fees, including appellate proceedings that the Owner sustains because of a default by the Principal under Paragraph 1 of this Bond, then this Bond is void; otherwise, this Bond remains in full force and effect.

BE IT FURTHER KNOWN:

1. Any changes in or under the Contract and compliance or non-compliance with any formalities connected with the Contract or alterations which may be made in the terms of the said Contract, or in the Work to be done under

it, or the giving by the Owner of any extension of time for the performance of the said Contract, or any other forbearance on the part of the Owner or Principal to the other shall not affect the obligation of the Principal and the Surety, or either of them, their heirs, personal representatives, successors or assigns under this Bond, notice to the Surety of any such changes, alterations, extensions or forbearance being hereby waived.

2. Lienors seeking the protection of this Bond must timely comply with the strict requirements set forth in Section 713.23, Florida Statutes, and as otherwise provided by law.

3. No legal action shall be instituted against the Principal or Surety on this Bond after one (1) year from the performance of labor or the completion of delivery of the materials or supplies.

IN WITNESS WHEREOF, the above parties have executed this instrument this ____ day of _____, 20__, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
In the presence of:

PRINCIPAL:

(Printed name of Witness)

By: _____
Its: _____

(Printed name of Witness)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledge before me this ____ day of _____, 20__, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally know to be **OR** has produced _____ as identification.

NOTARY PUBLIC

(Printed name of Notary)

(AFFIX NOTARY SEAL)

SURETY:

(Printed name of Witness)

By: _____

Its: _____

(Printed name of Witness)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledge before me
this ____ day of _____, 20__, by _____
_____, as _____ of _____
_____, a _____ corporation, on
behalf of the corporation. He/she is personally know to be
OR has produced _____ as identification.

NOTARY PUBLIC

(Printed name of Notary)

(AFFIX NOTARY SEAL)

BOND NO. _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That _____,
as Principal, and _____,
as Surety, located at _____
(Business Address), are held and firmly bound to **BOARD OF
COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, a political
subdivision of the State of Florida**, as Obligee, in the sum
of \$ _____, for payment whereof we bind
ourselves, our heirs, executors, personal representatives,
successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated
as of the ____ day of _____, 20____, with Obligee
for _____, in accordance with drawings and
specifications, which contract is incorporated by reference
and made a part hereof, and is referred to as the
"Contract".

THE CONDITON OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the
manner prescribed in the Contract; and
2. Pays Obligee any and all losses, damages,
expenses, costs and attorneys' fees, including
appellant proceedings, that Obligee sustains
because of any default by Principal under the
contract, including, but not limited to, all
delay damages, whether liquidated or actual,
incurred by Obligee; and
3. Performs the guarantee of all Work and materials
furnished under the Contract for the time
specified in the contract,

Then this Bond is void; otherwise, it remains in full
force.

Any changes in or under the Contract and compliance or
non-compliance with any formalities connected with the

Contract or the changes do not affect Surety's obligation under this Bond.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract or other Work to be performed hereunder, or the specifications referred to therein shall in any way affect its obligations under this Bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions to the terms of the contract or to Work or to the specifications.

This instrument shall be construed in all respects as a common law bond. It is expressly understood that the time provisions and statute of limitations under Section 255.05, Florida Statutes, shall not apply to this Bond.

In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond regardless of the number of suits that may be filed by Obligee.

IN WITNESS WHEREOF, the above parties have executed this instrument this ____ day of _____, 20__, the name of each party being affixed and these presents duly signed by its undersigned representatives, pursuant to authority of its governing body.

Signed, sealed and delivered
In the presence of:

PRINCIPAL:

(Printed name of Witness)

By: _____
Its: _____

(Printed name of Witness)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledge before me this ____ day of _____, 20__, by _____, as _____ of _____

_____, a _____ corporation, on behalf of the corporation. He/she is personally know to be OR has produced _____ as identification.

NOTARY PUBLIC

(Printed name of Notary)

(AFFIX NOTARY SEAL)

SURETY:

(Printed name of Witness)

By: _____
Its: _____

(Printed name of Witness)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledge before me this ____ day of _____, 20__, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally know to be OR has produced _____ as identification.

NOTARY PUBLIC

(Printed name of Notary)

(AFFIX NOTARY SEAL)

EXHIBIT "D"

INSURANCE REQUIREMENTS

The amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Services Office (IOS) forms and endorsements or broader where applicable:

A. Workers' Compensation and Employers Liability Insurance shall be maintained by the Construction Manager during the term of this Agreement for all employees engaged in the Work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

Workers' Compensation - Florida Statutory Requirements

Employers Liability:

\$500,000.00 Limit Each Accident
\$500,000.00 Limit Disease Aggregate
\$500,000.00 Limit Disease Each Employee

The insurance company shall waive its Rights of Subrogation against the Owner.

B. Commercial General Liability Insurance, written on an "occurrence" basis, shall be maintained by the Construction Manager. Coverages shall include, but not be limited to, Bodily Injury, Contractual for this Agreement, Independent Contractors, Products and Completed Operations, Personal Injury, Broad Form Property Damage including Completed Operations, Fire Legal Liability and Explosion, Collapse and Underground Coverages. Completed Operations Coverage shall be maintained for this Project for not less than five (5) years following completion and acceptance by the Owner. Limits of coverage shall not be less than the following for Bodily Injury, including Death, Property Damage and Personal Injury Combined Single Limits:

General Aggregate	<u>\$2,000,000.00</u>
Products-Completed Operations Aggregate	<u>\$1,000,000.00</u>
Personal and Advertising Injury	<u>\$1,000,000.00</u>
Each Occurrence	<u>\$1,000,000.00</u>
Fire Damage (Any One Fire)	<u>\$1,000,000.00</u>

Specific Project Aggregate Limits \$same as above

The aggregate limits shall be separately applicable to this Project through the use of an endorsement approved by owner. Applicable deductibles or self-insured retention, not to exceed \$_____, shall be the sole responsibility of the Construction Manager.

C. Automobile Liability Insurance shall be maintained by the Construction Manager as to ownership, maintenance, and use, including loading and unloading, of all owned, non-owned, leased or hired vehicles with limits not less than:

Bodily Injury, including Death & Property Damage Liability

\$1,000,000.00 Combined Single Limit Each Accident

D. Umbrella Liability Insurance or Excess Liability Insurance shall not be less than \$5,000,000.00, each occurrence and aggregate. Coverage shall not be in excess of the Employers Liability, Commercial General Liability, and Automobile Liability coverages required herein and shall include all coverages on a "following form" basis. Coverage shall drop down as primary on the exhaustion of any aggregate limit. The aggregate limits shall apply separately to this Project, and the specific project aggregate limits shall be evidenced by the use of an endorsement approved by the Owner.

E. Builder's Risk Insurance, on all risk completed value form, shall be provided by Construction Manager on the Project in an amount to be approved by Owner not to exceed the Contract Agreement, with the Owner, Construction Manager, and Design Professional as named insureds and including the interests of the subcontractors and sub-subcontractors as their interests may appear. The Owner, at its discretion, may require that the perils of earthquake, sinkhole, and flood be added to the Builder's Risk policy. If added, the amounts of coverage may be less than the Contract Agreement. Any deductibles under the Builder's Risk policy, not to exceed \$_____, shall be the sole responsibility of the Construction Manager. Loss, if any, under this coverage shall be adjusted with the Owner with the cooperation of the Construction Manager with the claim check made payable to the Owner for its own interest and the interests of the Construction Manager and

all other insured parties. Subrogation rights of the insurance company against the Owner, Construction Manager, Design Professional and its sub-consultants, and all subcontractors and sub-subcontractors, and any other parties that may be insured under the Builder's Risk coverage, shall be waived by the insurance company.

h/const-mgmt-agmt-exh-d

EXHIBIT "E"

RELEASE AND AFFIDAVIT

STATE OF FLORIDA

COUNTY OF Duval

BEFORE ME, the undersigned authority, personally appeared
 Donald Kartzmark , who after being duly
sworn, deposes, and says:

1. In accordance with the Contract Documents, and in consideration of \$16,674.00 (Sixteen Thousand, Six Hundred & Seventy-Four Dollars & no/100) paid, The Haskell Company

("Construction Manager"), releases and waives for itself and its subcontractors, materialmen, successors and assigns, all claims, demands, damages, costs, and expenses, whether in contract or in tort, against **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**, a political subdivision of the State of Florida, "Owner", relating in any way to the performance of the Agreement between Construction Manager and Owner, dated the 12th day of December , 2001, for the period from May 16, 2002 to June 30, 2002 .

2. Construction Manager certifies for itself and its subcontractors, materialmen, successors and assigns, that all charges for labor, materials, supplies, lands licenses, and other expenses for which Owner might be sued or for which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid.

3. Construction Manager agrees to indemnify, defend and save harmless Owner from all demands or suits, actions, claims of liens, or other charges filed or asserted against Owner arising out of the performance by Construction Manager of the Work covered by this Release and Affidavit.

4. This Release and Affidavit is given in connection with Construction Manager's [monthly] Application for Payment No. 41177301-02R .

CONSTRUCTION MANAGER:

Brian S. Campbell
Brian S. Campbell
(Printed Name of Witness)

Dianne W. Whipple
Dianne W. Whipple
(Printed Name of Witness)

Donald Kartzmark
By: Donald Kartzmark, The Haskell Company
Its: Project Manager

STATE OF Florida
COUNTY OF Duval

The foregoing instrument was acknowledged before me this 10th day of July, 2002, by Donald Kartzmark, as Project Manager of The Haskell Company, a Florida corporation, on behalf of the corporation. He/she is personally known to me OR has produced _____ as identification.

Rosalind Harkness
NOTARY PUBLIC

Rosalind Harkness
(Printed Name of Notary)

(AFFIX NOTARY SEAL)

h/const-mgmt-agmt-exh-3

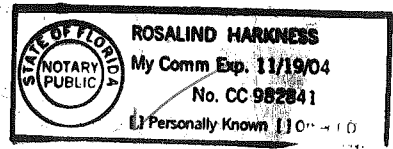


EXHIBIT "F"

CONSTRUCTION MANAGER APPLICATION FOR PAYMENT

[INSERT AIA FORM OF PAYMENT APPLICATION
AND SCHEDULE OF VALUES]

h:const-mgmt-agmt-exh-f

EXHIBIT "G"

CHANGE ORDER

CHANGE ORDER NO. _____ CONTRACT NO. _____

TO: BOARD OF COUNTY COMMISSIONERS
Post Office Box 1010
Fernandina Beach, FL 32035-1010
C/O Walt Gossett, County Coordinator

DATE: _____

PROJECT NAME: _____

PROJECT NO.: _____

Under our AGREEMENT dated _____

You are hereby authorized and directed to make the following change(s) in accordance with the terms and conditions of the Agreement:

For the [Additive] [Deductive] Sum of _____
_____ (\$_____).

Original Agreement Amount \$ _____

Sum of Previous Changes \$ _____

This Change Order (Add) (Deduct) \$ _____

Present Agreement Amount \$ _____

The time for completion shall be (increased/decreased) by _____ calendar days due to this Change Order. Accordingly, the Contract Time is now _____ (_____) calendar days, and the final completion date is _____. Your acceptance of this Change Order shall constitute a modification to our Agreement and will be performed subject to all the same terms and conditions as contained in our Agreement indicated above, as fully as if

the same were repeated in this acceptance. The adjustment, if any, to the Agreement shall constitute a full and final settlement of any and all claims arising out of or related to the change set forth herein, including claims for impact and delay costs.

Accepted: _____

CONSTRUCTION MANAGER:

OWNER:

By: _____
Its: _____

By: _____
Its: _____

DESIGN PROFESSIONAL:

By: _____
Its: _____

h/const-mgmt-agm-exh-g

EXHIBIT "H"

MASTER PROJECT SCHEDULE FORM

DESIGN PHASE

Activity Description	Orig Dur	Early Start	Early Finish
Schematic Design	104	12DEC00A	08MAY01A
Owner Review of Schematic Design	5	08MAY01A	15MAY01A
Design Development	60	15MAY01A	14AUG01A
Owner Review of Design Development	10	14AUG01A	28AUG01A
Permit Documents	50	28AUG01A	12DEC01A
Owner Review of Permit Documents	5	28DEC01A	12DEC01A
Submit for Building Permit	20	03JAN02A	17MAY02
Construction Documents	63	28AUG01A	12DEC01A

CONSTRUCTION MANAGER RFQ

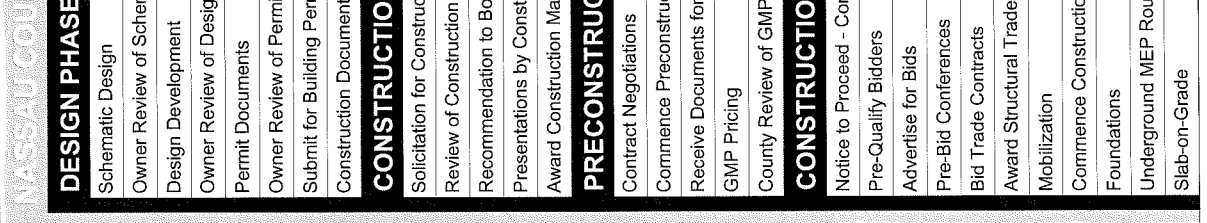
Solicitation for Construction Manager	1	23JUL01A	21AUG01A
Review of Construction Manager RFQ's	4	21AUG01A	24AUG01A
Recommendation to Board of Commissioners	1	27AUG01A	27AUG01A
Presentations by Construction Managers	1	05SEP01A	05SEP01A
Award Construction Management Contract	5	05SEP01A	05SEP01A

PRECONSTRUCTION SERVICES PHASE

Contract Negotiations	5	12OCT01A	12DEC01A
Commence Preconstruction Services	0	03JAN02A	
Receive Documents for GMP	0	03JAN02A	
GMP Pricing	30	07JAN02A	10APR02A
County Review of GMP Pricing	10	26FEB02A	11APR02A

CONSTRUCTION PHASE

Notice to Proceed - Construction Phase	0	14MAY02	
Pre-Qualify Bidders	15	15MAY02	05JUN02
Advertise for Bids	20	15MAY02	12JUN02
Pre-Bid Conferences	5	06JUN02	12JUN02
Bid Trade Contracts	120	13JUN02	03DEC02
Award Structural Trades	15	13JUN02	03JUL02
Mobilization	5	13JUN02	19JUN02
Commence Construction	0	05JUL02	
Foundations	40	05JUL02	29AUG02
Underground MEP Rough-ins	20	16SEP02	11OCT02
Slab-on-Grade	20	23SEP02	18OCT02



Start Date: 12DEC00
 Finish Date: 27JAN04
 Data Date: 14MAY02
 Run Date: 13MAY02 15:55

NASSAU COUNTY JUDICIAL COMPLEX
 NASSAU COUNTY
 THE HASKELL COMPANY

Sheet 1 of 2
 Exhibit "H"
 Master Project Schedule

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NASSAU COUNTY JUDICIAL COMPLEX

Activity Description	Orig Dur	Early Start	Early Finish
DESIGN PHASE			
Schematic Design	104	12DEC00A	08MAY01A
Owner Review of Schematic Design	5	08MAY01A	15MAY01A
Design Development	60	15MAY01A	14AUG01A
Owner Review of Design Development	10	14AUG01A	28AUG01A
Permit Documents	50	28AUG01A	12DEC01A
Owner Review of Permit Documents	5	28DEC01A	12DEC01A
Submit for Building Permit	20	03JAN02A	17MAY02
Construction Documents	63	28AUG01A	12DEC01A
CONSTRUCTION MANAGER RFQ			
Solicitation for Construction Manager	1	23JUL01A	21AUG01A
Review of Construction Manager RFQ's	4	21AUG01A	24AUG01A
Recommendation to Board of Commissioners	1	27AUG01A	27AUG01A
Presentations by Construction Managers	1	05SEP01A	05SEP01A
Award Construction Management Contract	5	05SEP01A	05SEP01A
PRECONSTRUCTION SERVICES PHASE			
Contract Negotiations	5	12OCT01A	12DEC01A
Commence Preconstruction Services	0	03JAN02A	
Receive Documents for GMP	0	03JAN02A	
GMP Pricing	30	07JAN02A	10APR02A
County Review of GMP Pricing	10	26FEB02A	11APR02A
CONSTRUCTION PHASE			
Notice to Proceed - Construction Phase	0	14MAY02	
Pre-Qualify Bidders	15	15MAY02	05JUN02
Advertise for Bids	20	15MAY02	12JUN02
Pre-Bid Conferences	5	06JUN02	12JUN02
Bid Trade Contracts	120	13JUN02	03DEC02
Award Structural Trades	15	13JUN02	03JUL02
Mobilization	5	13JUN02	19JUN02
Commence Construction	0	05JUL02	
Foundations	40	05JUL02	29AUG02
Underground MEP Rough-ins	20	16SEP02	11OCT02
Slab-on-Grade	20	23SEP02	18OCT02

Start Date: 12DEC00
 Finish Date: 27JAN04
 Data Date: 14MAY02
 Run Date: 13MAY02 15:55

Legend:
 Early Bar: [White Box]
 Progress Bar: [Black Box]
 Critical Activity: [Thick Black Box]

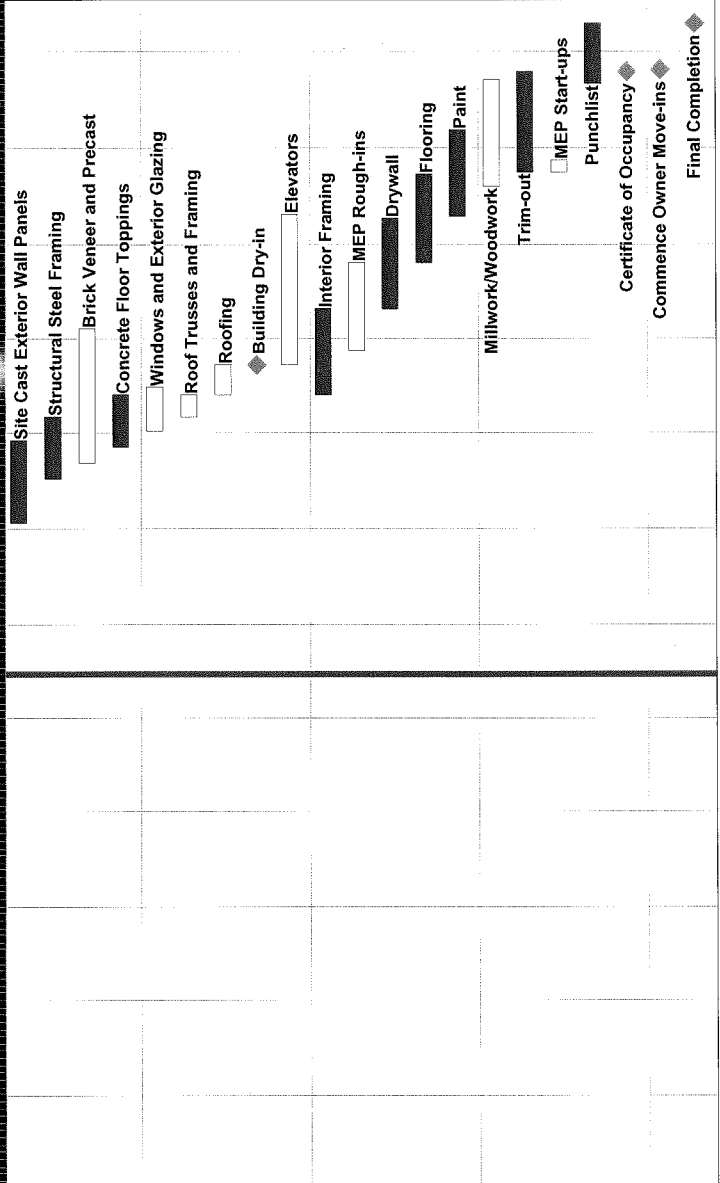
Sheet 1 of 2

NASSAU COUNTY JUDICIAL COMPLEX
 NASSAU COUNTY
 THE HASKELL COMPANY

Exhibit "H"
 Master Project Schedule

© Primavera Systems, Inc.

Activity Description	Orig Dur	Early Start	Early Finish
Site Cast Exterior Wall Panels	55	07OCT02	24DEC02
Structural Steel Framing	40	18NOV02	16JAN03
Brick Veneer and Precast	90	04DEC02	10APR03
Concrete Floor Toppings	34	18DEC02	05FEB03
Windows and Exterior Glazing	30	03JAN03	13FEB03
Roof Trusses and Framing	15	17JAN03	06FEB03
Roofing	20	07FEB03	06MAR03
Building Dry-in	0	07MAR03	
Elevators	100	07MAR03	28JUL03
Interior Framing	60	06FEB03	30APR03
MEP Rough-ins	60	20MAR03	12JUN03
Drywall	60	01MAY03	25JUL03
Flooring	60	13JUN03	05SEP03
Paint	60	28JUL03	17OCT03
Millwork/Woodwork	75	25AUG03	05DEC03
Trim-out	70	08SEP03	12DEC03
MEP Start-ups	10	08SEP03	19SEP03
Punchlist	40	01DEC03	27JAN04
Certificate of Occupancy	0		12DEC03
Commence Owner Move-ins	0	15DEC03	
Final Completion	0		27JAN04



Start Date: 12DEC00
 Finish Date: 27JAN04
 Data Date: 14MAY02
 Run Date: 13MAY02 15:55

Legend:
 Early Bar: [White Bar]
 Progress Bar: [Black Bar]
 Critical Activity: [Thick Black Bar]

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NAS2

Sheet 2 of 2
 NASSAU COUNTY JUDICIAL COMPLEX
 NASSAU COUNTY
 THE HASKELL COMPANY

Exhibit "H"
 Master Project Schedule

EXHIBIT "I"

CONSTRUCTION MANAGER'S STAFFING SCHEDULE



T H E H A S K E L L C O M P A N Y
TOTAL FACILITY SOLUTIONS

Exhibit "I"

Construction Managers Staffing Schedule
Nassau County Judicial Complex
Yulee, Florida

Design Phase:

Architectural Constructability Review – Jim Bush, AIA
Structural Constructability Review – Craig Williams, PE
Mechanical Constructability Review – Brad Elkins, PE
Electrical Constructability Review – Merle Hawkins, PE
Quality Assurance Constructability Review – Russell Neudeck
Pre-construction Project Manager – Scott Prince

Construction Phase:

On Site Staff Full Time

Construction Project Manager – Don Kartzmark
Assistant Project Manager – To Be Determined
General Superintendent – Millard Brewster
Assistant Superintendent – To Be Determined
Direct Purchase Order/Doc. Control Clerk – Kim Mitchell
Field Clerk/Administrative Assistant – To Be Determined

Office Staff – On site Part Time

Quality Assurance Manager – Russell Neudeck
Quality Assurance Coordinators – To Be Determined, One visit every week
Safety Director – Dick Knight
Regional Safety Inspector – Don Grant, Minimum once monthly, start biweekly
Estimator – Tom Bolt

05/08/02

HASKELL BUILDING • JACKSONVILLE, FLORIDA 32231-4100 • 904/791-4500 FAX 791-4699

AAC000281 EB0000906 IB0000849 QB-0011795

EXHIBIT "J"

CERTIFICATE OF INSURANCE FORM

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE
05/06/2002

PRODUCER 877-945-7378 Willis North America, Inc. - Regional Cert Center 26 Century Blvd. P. O. Box 305191 Nashville, TN 372305191		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED The Haskell Company P.O. Box 44100 Jacksonville, FL 32231-4100		INSURERS AFFORDING COVERAGE	
		INSURER A:	Zurich American Insurance Company 27855-006
		INSURER B:	Great American Insurance Company 16691-001
		INSURER C:	RLI Insurance Company 13056-002
		INSURER D:	
		INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	GLO297874902	1/31/2002	1/31/2003	EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE (Any one fire)	\$ 50,000
					MED EXP (Any one person)	\$ 5,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMPI/OP AGG	\$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	BAP297875102	1/31/2002	1/31/2003	COMBINED SINGLE LIMIT (Ea accident)	\$ 2,000,000
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY: EA ACC	\$
					AGG	\$
B	EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000	TUU357732802	1/31/2002	1/31/2003	EACH OCCURRENCE	\$ 25,000,000
					AGGREGATE	\$ 25,000,000
						\$
						\$
						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	WC297875002	1/31/2002	1/31/2003	E.L. EACH ACCIDENT	\$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
					E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
C	OTHER Blanket Builders Risk	RBR0001008	1/31/2002	1/31/2003	\$40,000,000. Project Limit Special Form subject to policy exclusions	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 RE: Nassau County Judicial Complex

CERTIFICATE HOLDER Nassau County Clerk of The Courts PO Box 456 Fernandina Beach, FL 32035		ADDITIONAL INSURED; INSURER LETTER:	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Robert W. Allen</i>
---	--	-------------------------------------	---

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

EXHIBIT "K"

AMENDMENT NO. 1 TO AGREEMENT BETWEEN
OWNER AND CONSTRUCTION MANAGER

Pursuant to Sections 4B and 7A of the Agreement, dated _____, between BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, a political subdivision of the State of Florida, "Owner", and _____, ("Construction Manager"), for management and construction of the improvements to upgrade, expand, and rehabilitate the Owner's _____ ("Project"), the Owner and Construction Manager establish a Guaranteed Maximum Price and Contract Time for Work as set forth below:

ARTICLE 1

GUARANTEED MAXIMUM PRICE

Construction Manager's Guaranteed Maximum Price for the Work is _____ Dollars (\$_____). This Price is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Attachments 1 through 6, as follows:

Attachment Number	Description	Pages	Dated
1	Drawings, Specifications, addenda and General, Supplementary, and other Conditions of the Contract on which the Guaranteed Maximum Price is based.	_____ through _____	_____
2	Allowance items	_____ through _____	_____
3	Assumptions and clarifications made in	_____ through _____	_____
4	Completion schedule	_____ through _____	_____
5	Alternate prices	_____ through _____	_____
6	Unit prices	_____ through _____	_____

ARTICLE 2

CONTRACT TIME

The total period of time beginning with the Construction Phase Commencement Date to the date of substantial completion of the Work is _____ days ("Contract Time").

CONSTRUCTION MANAGER:

OWNER:

By: _____
Its: _____
Attest: _____

By: _____
Its: _____
Attest: _____

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NOTICE TO PROCEED

To: The Haskell Company Date: 12-21-01
~~12-12-01~~
111 Riverside Avenue Project: Bid No. N/A
Jacksonville, FL 32202-4950

You are hereby notified to commence the Construction Phase Services portion of work in accordance with the Agreement dated the 12th day of December, 2001, on or before the 3rd day of January, ~~2001-2002~~ ²⁰⁰². The Date of Completion of all Work is to be established under Amendment No. 1.

OWNER:

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA




MARIANNE MARSHALL
Its: Chairman

ATTEST:


J. M. "CHIP" OXLEY, JR.
Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney


MICHAEL S. MULLIN

ACCEPTANCE OF NOTICE

Receipt of the above Notice To Proceed is hereby acknowledged by:

Denise M. Ramsay, The Haskell Company, this 27th day
of December, 2001.

Denise M. Ramsay
By: Denise M. Ramsay
Its: Project Executive

NOTICE TO PROCEED

To: The Haskell Company Date: December 21, 2001
~~December 12, 2001~~
111 Riverside Avenue Project: Bid No. N/A
Jacksonville, FL 32202-4950

You are hereby notified to commence the Design Phase Services portion of work in accordance with the Agreement dated the 12th day of December, 2001, on or before the ~~17th~~ 3rd day of ~~December~~ January, ~~2001~~ 2002. The Date of Completion of all Work is to be established under Amendment No. 1.

OWNER:

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA



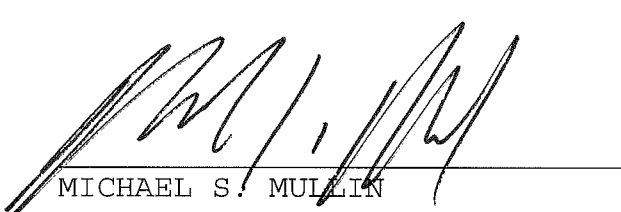
MARIANNE MARSHALL
Its: Chairman

ATTEST:



J. M. "CHIP" OXLEY, JR.
Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney


MICHAEL S. MULLIN

ACCEPTANCE OF NOTICE

Receipt of the above Notice To Proceed is hereby acknowledged by:

Denise M. Ramsey, The Haskell Company this 27th day
of December, 2001.

Denise M. Ramsey
By: DENISE M. RAMSEY
Its: PROJECT EXECUTIVE