

**CONTRACT NO. 2024000098
BETWEEN CHARLOTTE COUNTY
and
JON F. SWIFT CONSTRUCTION, INC.
for
CONSTRUCTION MANAGER AT RISK –
WILLIAM R. GAINES JR. VETERANS MEMORIAL PARK AND G.C. HERRING PARK**

THIS CONTRACT ("Contract" or "Agreement") is made and entered into by and between CHARLOTTE COUNTY, a political subdivision of the State of Florida, 18500 Murdock Circle, Port Charlotte, Florida 33948-1094 ("County") and JON F. SWIFT INC., d/b/a Jon F. Swift Construction 2221 8th St. Sarasota, FL 34237 ("Construction Manager").

WITNESSETH

WHEREAS, County has determined that it is necessary to retain a construction manager to provide Construction Management at Risk Services for as park of a construction team for the second Phase to Charlotte County's William R. Gaines, Jr. Veterans Memorial Park in conjunction with the first phase of G.C. Herring Park (the "Project"); and

WHEREAS, the Construction Manager has reviewed RFP No. 2024000098 and is qualified, willing, and able to provide and perform all such services in accordance with its terms; and

WHEREAS, the County, through a selection process conducted in accordance with the requirements of law and County policy, has determined that it would be in the best interest of the County to award a contract to Construction Manager for the rendering of those services described in the RFP and the Scope of Services.

NOW, THEREFORE, the County and the Construction Manager, in consideration of the mutual covenants contained herein, do agree as follows:

**ARTICLE 1.
INCORPORATION OF DOCUMENTS**

1.1. RFP No. 2024000098, consisting of pages 1 through and including 17, issued by County on December 21, 2023, Addendum #1 issued by County on January 24, 2024 (collectively the "RFP"), and the Proposal submitted by Construction Manager dated January 30, 2024, all filed with the Clerk of the Circuit Court of Charlotte County, Minutes Division as RFP No. 2024000098, are hereby specifically incorporated and made a part of this Agreement as if same had been set forth at length herein.

1.2. In the event of any conflict between the documents constituting this Agreement, the documents shall be given precedence in the following order:

- 1) This Contract including all Exhibits hereto;
- 2) The Final Scope of Work;
- 3) RFP No. 2024000098;
- 4) Design Drawings; and
- 5) The Proposal submitted by Construction Manager dated January 30, 2024.

ARTICLE 2.
COMPENSATION AND PAYMENT OF
CONSTRUCTION MANAGEMENT SERVICES FEES

2.1. The Work on the Project shall be conducted in Phases. Phase I shall be the Preconstruction Services and Phase II shall be the Construction Services. The County shall pay the Construction Manager for the construction management services rendered hereunder and completed in accordance with the terms of this Contract and any exhibits or amendments hereto for performing the following:

2.1.1. Phase I – Preconstruction Services. Construction Manager shall perform the services listed in **Exhibit A – Preconstruction Narrative RFP # 24-098 William R. Gaines, Jr. Veterans Memorial Park & GC Herring Park**, which contains the total Preconstruction services, prepared by Construction Manager, is attached hereto and is specifically incorporated into and made a part of this Contract.

Construction Manager shall be paid a total amount not to exceed Fifty-Nine Thousand Eight Hundred Dollars and No Cents (\$59,800.00) for those preconstruction services in accordance with **Exhibit A**. These Preconstruction Services shall be performed in accordance with the Contract and shall not be included in the Guaranteed Maximum Price (“GMP”). The Preconstruction Services shall commence upon the Construction Manager’s receipt of the written Notice to Proceed with Preconstruction Services from the County’s Project Manager and shall continue through the completion of Phase I, in accordance with the time limits established in the RFP, **Section RP-22 –Proposed Project Budget and Schedule**.

2.1.2 Phase II - Construction Services. When the GMP is identified and completed, it shall be made a part of this Agreement by a mutually agreed upon written amendment to this Agreement. Construction Management GMP costs incurred to date will be made part of the GMP.

ARTICLE 3.
DEFINITIONS

3.1. The following words and expressions shall, wherever they appear in the Contract, be construed as follows:

3.1.1. Contract. Contract means this document executed by the Construction Manager and County and any and all documents referenced herein and any Attachments or Exhibits attached hereto as well as all subsequent Change Orders.

3.1.2. Application for Payment. Application for Payment means the form which is to be used by Construction Manager in requesting a progress or Final Payment and which shall include such supporting documentation as is required by this Contract.

3.1.3. Approval. When applied to approval from the County, this term shall mean approval which is, at a minimum, evidenced by a written document authored or initialed by the County and subject to the formalities imposed by specific provisions in this Contract.

3.1.4. Board. Board shall mean the Board of County Commissioners of Charlotte County, Florida.

3.1.5. Change Order. Change Order shall mean a written order authorizing an addition, deletion, or revision in the Work or an adjustment in the Guaranteed Maximum Price (defined in 3.1.16) or the Contract Time issued after execution of the Contract.

3.1.6. Contract Time. Contract Time means the number of calendar days stated in the Contract for completion of the Work as amended by approved Change Order(s). The commencement date of the Contract Time shall be the Notice to Proceed Date shown in the Notice to Proceed with Phase I – Pre-Construction.

3.1.7. County. County shall mean Charlotte County, a political subdivision of the State of Florida and its authorized designees, agents and employees.

3.1.8. Day. One (1) calendar day when used in the Contract, measured from midnight to the next midnight.

3.1.9. Defective. Defective is an adjective which refers to Work that is faulty, deficient or otherwise does not conform to the Final Construction Documents or the requirements of this Contract.

3.1.10. Engineer of Record. The engineering firm under contract with the County.

3.1.11. Equal/Equivalent. Equal or Equivalent means a product, service, component or system which is demonstrated, to the satisfaction of the County, to be equal or equivalent to the product, service, component or system specified. The County shall be the sole judge of acceptability of an Equal or Equivalent.

3.1.12. Final Completion. Final Completion means the date the Work, including but not limited to all Punch List items (as defined herein below), has been completed to the County's satisfaction.

3.1.13. Final Construction Documents. Final Construction Documents means the approved and permitted Construction Documents, which are developed, prepared and created by the Engineer and reviewed and approved in writing by the County, setting forth in detail all Work, including, but not limited to, all labor, materials, equipment, and services

necessary to construct the Project. Once the Final Construction Documents for the Project have been approved in writing by the County, no changes shall be made thereto without the express written consent of the County.

3.1.14. Final Payment. Final Payment is the payment made to Construction Manager, after the Certificate of Final Completion for the Work has been approved and issued by the Project Manager, and the final Change Order, if any, has been approved by the Board.

3.1.15. General Requirements. Cost of General Requirements is included within the Guaranteed Maximum Price (defined in 3.1.16) and shall include general Construction Manager Project expenses during construction not included within general conditions. General Requirements include mobilization, field offices, superintendent(s), construction testing, lay-out and as-built surveying, temporary utilities, temporary security fences, temporary safety-related protection, dust control, pest control, temporary hoists, scaffolding and project sign.

3.1.16. Guaranteed Maximum Price ("GMP"). Guaranteed Maximum Price means the maximum compensation to be paid hereunder by the County to Construction Manager for all salaries and fees including but not limited to the costs, expenses, taxes, reimbursable costs and expenses, overhead and administrative costs, general conditions, profits and costs of all labor, services, equipment, tools, supplies, fixtures and materials incurred or used by Construction Manager in providing and performing all the Work required to complete the Project.

3.1.17. Nonconformance Report. A written notice from the Project Manager to the Construction Manager reporting on an aspect of Defective Work which requires the immediate correction of same by the Construction Manager.

3.1.18. Notice To Proceed With Preconstruction Services. Notice To Proceed With Preconstruction Services means County's written authorization to Construction Manager to commence professional and consulting services for the Work under this Contract.

3.1.19. Notice To Proceed With Construction Service. Notice to Proceed With Construction Services means County's written authorization to Construction Manager to commence with construction of the Project, including mobilization.

3.1.20. Professional. Professional means any individual, firm or entity, which provides design or professional services, whether engineering or surveying, and which is engaged by Construction Manager in providing and performing the Work for which Construction Manager is contractually obligated, responsible and liable to provide and perform under this Contract. Each Professional shall possess all applicable, valid and current licenses necessary to do business in the State of Florida and Charlotte County for the performance of the Work. The County expressly disclaims any responsibility, liability or obligations whatsoever for or under any Contract entered into between

Construction Manager and the Professional and further states that it shall not be responsible for any payments or any other obligations due or owing to the Professional.

3.1.21. Project. Project means the preconstruction and construction management services, design and schedule coordination, utility relocations, and construction of all buildings and improvements to the Project, as set forth in the RFP, the Final Scope of Work and all Design Drawings.

3.1.22. Project Manager. An individual employed by the County and assigned under the supervision of the County Administrator to manage and administer the Project which is the subject of this Contract.

3.1.23. Project Schedule. The Project Schedule means the schedule, showing the sequence and schedule of the Construction Manager's furnishing of all labor, services, equipment and materials for the Project. The Project Schedule consists of the RPF, Project Schedule Summaries which establish major milestones for the project, and the Project Schedule Detail (to be prepared by Construction Manager and accepted by the County) showing in detail the sequence and schedule of the Construction Manager's Work for the Project. The Project Schedule Summaries will be prepared, accepted and approved by the parties after the completion of the Final Construction Documents and will be attached and incorporated herein as an Exhibit to this Contract at a later date. The Project Schedule Detail shall be submitted by Construction Manager for review and approval of County prior to the Notice to Proceed with Construction Services. The Project Schedule may be amended, modified or revised only in accordance with the terms of this Contract.

3.1.24. Punch List. Punch List means the approved list(s) of incomplete and/or deficient Work that shall be completed by Construction Manager after Substantial Completion but before Final Completion can be achieved.

3.1.25 Schedule of Values. Schedule of Values is an itemized list of each activity required to complete the Scope of Services on this Project, along with the corresponding costs or values.

3.1.26. Site. Site shall mean the area on which the Construction Manager's construction Work is to be performed and such other areas that may be designated as such by the Final Construction Documents, and upon which the Project and associated improvements are to be constructed by Construction Manager.

3.1.27. Subconsultant. Subconsultant means any person, firm or entity offering or providing professional and/or consulting services which is not included in the definition of "Professional" above and which has a direct contract with Construction Manager or with any other Subconsultant for the performance of any part of the Construction Manager's obligations in providing and performing the Work for which Construction Manager is contractually obligated, responsible and liable under the Contract. Each

Subconsultant shall possess all applicable valid and current trade licenses and all licenses necessary for the performance of the Work.

3.1.28. Subcontractor. Subcontractor means any person, firm or entity providing other than professional or consulting services which has a direct contract with Construction Manager or with any other subcontractor for the performance of any part of the Construction Manager's obligations in providing and performing the Work for which Construction Manager is contractually obligated, responsible and liable under the Contract. Each subcontractor shall possess all applicable valid and current trade licenses and all licenses necessary for the performance of the Work.

3.1.29. Submittals. Submittals mean all drawings, diagrams, illustrations, schedules, samples, test results, and other data which are specifically prepared by Construction Manager, its Professionals, Subconsultants, or Subcontractors, or any manufacturers, fabricators, suppliers or distributors, and submitted by Construction Manager to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by Construction Manager, or its Professionals, Subconsultants, or Subcontractors, or any manufacturers, fabricators, suppliers or distributors, and submitted by Construction Manager to illustrate material or equipment for some portion of the Work, at no additional cost to the County.

3.1.30. Substantial Completion. Substantial Completion means the date the Work is complete, with the exception of Punch List items, and the Project is available for its intended use by County as evidenced by a fully executed Certificate of Substantial Completion which has been prepared and certified by the Engineer of Record after first being approved in writing by the Project Manager as being in full compliance with the requirements of this Contract.

3.1.31. Substitution. Substitution means a product, service, component or system which is not Equal or Equivalent to that specified but is proposed by Construction Manager in lieu of that specified and shall be subject to review and approval by the County and the Project Manager.

3.1.33. Work. Work means any and all authorized and approved work, materials supplies, tools, fixtures, labor, services, equipment, design, professional, construction management, and contract administration services for the design, Site development and construction of the Project performed and provided by Construction Manager (and its agents, employees, Subconsultants, Professionals, and Subcontractors) pursuant to this Contract.

ARTICLE 4.
PRELIMINARY MATTERS/NOTICES TO PROCEED/
ASSUMPTION OF RISKS BY CONSTRUCTION MANAGER

4.1. Effective Date: The Effective Date of this Agreement is the date on which it is signed by both Parties.

4.2. Verification Before Starting Work. Before undertaking each part of the Work, the Construction Manager shall carefully study and compare the design documents and check and verify pertinent figures and all applicable field information. The Construction Manager shall promptly report in writing to the Project Manager any conflict, error, or discrepancy which it may discover, and Construction Manager shall promptly make every reasonable effort to resolve any such conflict, error or discrepancy.

4.3. Scope of Work. The Work on the Project shall be conducted in Phases. Phase I shall be the Preconstruction Services and Phase II shall be the Construction Phase.

4.3.1. Construction Manager shall provide and perform all Work necessary for the completion of the entire Project commensurate with the intended high quality of design and construction and low maintenance cost for the Project. The Scope of Work shall include, but is not limited to, providing and performing all Work necessary:

- (i) For the construction and completion of the Project; and
- (ii) To furnish efficient construction administration, supervision and superintendence; and
- (iii) For Site development tasks, approvals, testing, surveying, environmental mitigation, geotechnical, traffic, landscaping, security, construction, post-construction, accounting and control, coordination and efficient management to facilitate completion of the Project.

4.3.2. Quality of Scope of Work. The Project, as designed and constructed, shall be functionally sound, technically proficient, developed with structural integrity, shall exhibit high quality engineering principles, shall be in compliance with all governing laws, regulations, codes, and requirements in effect as of the date of the issuance of the building permit.

4.4. Commencement of Work and Notices to Proceed.

4.4.1. The Contract Time shall commence on the Notice to Proceed date indicated in the Notice to Proceed With Preconstruction Services. Notice to Proceed with Preconstruction Services shall be issued by the Project Manager within thirty (30) days after the Construction Manager has delivered to the County the executed Contract and Insurance Certificates in accordance with the Contract or completion of negotiations with Engineer of Record, whichever occurs later.

4.4.2. The Construction Manager shall begin the Work on the date the Contract Time commences. No Work shall be performed by the Construction Manager or its Professionals, Subconsultants, or Subcontractors, and no irrevocable commitments to vendors shall be made, until issuance of Notice To Proceed with Preconstruction

Services, at which time Construction Manager may commence to perform Preconstruction Services in accordance with the requirements of this Contract.

4.4.3. A separate Notice to Proceed with Construction Services shall be issued by the Project Manager upon receipt of the required Payment Bond and Performance Bond. In the absence of written authorization from the Project Manager, no construction Work shall be performed by the Construction Manager and no irrevocable commitments to vendors shall be made until a separate Notice To Proceed With Construction Services is issued by the Project Manager. The County may issue separate Notices to Proceed with Construction Services for portions of the Project as Final Construction Documents are completed.

4.4.4. Preconstruction Conference(s). Prior to issuance of the Notice to Proceed with Construction Services, conference(s) shall be held for review and acceptance of the Construction Manager's Critical Path Method ("CPM") Schedule, Final Schedule of Values, personnel and Subcontractor list, to review mobilization requirements, to establish procedures for handling shop drawings and other Submittals and Applications for Payment, and to establish a working understanding among the parties as to the Work. As many preconstruction conferences as needed will be held if portions of the design are completed at different times.

4.5. Assumption of Risks by Construction Manager.

4.5.1. Except as otherwise provided in this Contract, Construction Manager shall have a duty to anticipate and provide adequate contingencies for risks associated with the Work for the Project. Construction Manager shall take into consideration, and factor into its Project Schedule and GMP, all Site conditions and difficulties involved in the completion of the Work, the variations in permitting time frames, and the time frames available to County for reviewing deliverables, schedules, and Applications for Payment. Given this duty, Construction Manager should not request additional compensation or time to complete, if delays and complicating factors should have reasonably been anticipated.

4.5.2. Construction Manager shall become familiar with and prepare for the normal seasonal weather conditions existing in Charlotte County, Florida. Normal seasonal weather conditions are expected to impact the Work in numerous ways, including, but not limited to, delays during and after periods of rainfall, temporary flooding and ponding, wet ground, high winds and debris. Construction Manager's GMP and Project Schedule, and any subsequent approved revisions thereto, shall sufficiently anticipate and include unfavorable weather days.

4.5.3. Construction Manager has ascertained such Site conditions as may be readily determined by inspection and inquiry, such as the location, accessibility and general character of the Site prior to executing this Contract.

4.5.4. The Construction Manager assumes the risk for all costs associated with Site conditions which are foreseeable through the exercise of due diligence. It shall be the obligation of the Construction Manager to fully investigate the Site and provide sufficient contingency amounts for conditions which are foreseeable and which may differ from those suggested by inspections and reports provided with the RFP, or any addenda thereto.

ARTICLE 5.

CONSTRUCTION MANAGER'S DUTIES AND RESPONSIBILITIES

5.1. General Duties and Obligations of Construction Manager Related to Entire Work.

5.1.1. County has retained Construction Manager to provide the Work described herein. Since County has entrusted the Work to the Construction Manager, Construction Manager shall use its professional expertise to protect the interest of the County at all times. The quality of Construction Manager's work shall be consistent with the requirements of this Contract and with prevailing industry standards. The same standards of care shall be required of any subconsultants or subcontractor engaged by Construction Manager. Construction Manager shall ensure that its fees charged for the Work are fair, reasonable and consistent with fees charged locally for similar work.

5.1.1.1 Construction Manager understands and acknowledges that all documents and materials provided with the RFP, and any addenda, are general and preliminary, and that Construction Manager shall not rely on the accuracy or completeness thereof. Construction Manager acknowledges that its duties hereunder shall not be excused or discharged in any respect based on the incompleteness or inaccuracy of any such documents or materials.

5.1.2. Comply with all Laws and Regulations. The Construction Manager shall give all notices and comply with all federal, state and local laws, ordinances, rules, and regulations applicable to the Work. If the Construction Manager observes that any part of the Contract is contradictory to such laws, rules, and regulations, it shall notify the Project Manager promptly in writing. If the Construction Manager performs any work that it knows or should know to be contrary to such laws, ordinances, rules, and regulations, Construction Manager shall bear the cost for any such work performed and the cost of any remedial work to bring the work into compliance.

5.1.3. Furnish all Work, Labor, and Materials. Construction Manager shall provide or cause to be provided all Preconstruction and construction services, and shall furnish and pay for, all labor, materials, equipment, tools, construction equipment and machinery, appliances, transportation, water, heat, fuel, power, light, telephone, and sanitary utilities, and all other utilities, facilities, services, and incidentals necessary for providing, performing and completing the Work, whether temporary or permanent, incorporated or to be incorporated in the Work, and necessary for the execution, testing, initial operation, and completion of the Work.

5.1.4. Duty to Construct Within GMP. Construction Manager shall construct the Project within the GMP. If County requests the Final Construction Documents be modified at any time for compliance with the Contract, then such requests shall not relieve the Construction Manager from its responsibility to deliver the Project within the GMP, provided that the County requested changes do not materially change the work included within the GMP. In addition, Construction Manager shall monitor its costs during the Preconstruction and construction of the Project and immediately advise the Project Manager of any deviations. Construction Manager shall submit a written explanation for such deviations, all of which are subject to County's approval as set forth herein.

5.1.4.1. Construction Manager shall, without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the negligent act, error or omission of Construction Manager or any subconsultants or subcontractor engaged by Construction Manager for one year after the completion of Construction Manager's services under this Agreement. The foregoing shall be construed as an independent duty to correct rather than a waiver of County's rights under any applicable statute of limitations. County review of, approval of, acceptance of, or payment for any of Construction Manager's work product, services, or materials shall not be construed to operate as a waiver of any of County's rights under this Agreement, or cause of action County may have arising out of the performance of this Agreement.

5.1.5. Alternative Approaches. Construction Manager shall review with the County alternative approaches to design and construction of the Project to save time and costs whenever possible.

5.1.6. Progress Reports. During Preconstruction and construction, Construction Manager shall keep County regularly advised of the progress and quality of all Work by providing monthly Progress Reports in a form and content acceptable to Project Manager, advising County, among other things, of Construction Manager's adherence to or deviation from the Project Schedule. Construction Manager shall advise County of any and all identified causes for deviating from the Project Schedule as soon as those causes become evident. Each monthly Progress Report shall include, but shall not be limited to, reports on:

- (i) Progress of Work during the previous thirty (30) days; the status of Site development and construction activities; and
- (ii) An analysis of overall progress and budget compliance with cash flow analysis and an affirmation that deliverables will be on time and within the GMP; and an overall percentage of completion estimate; and
- (iii) If behind the Project Schedule, a proposed recovery plan; and
- (iv) List of problems and anticipated problems with corrective action planned or needed; and
- (v) An outline of proposed activities and key tasks during the coming month in a "30 Day Look Ahead" schedule; and

- (vi) Any changes in personnel of the Construction Manager or of its Professionals, Subconsultants or Subcontractors; and
- (vii) Results of any inspections, tests or Site visits; and
- (viii) Any major deliveries of materials or large equipment, (also to be included in "30 Day Look Ahead" schedule); and
- (ix) Any other reasonable information covering Construction Manager's performance hereunder.

5.1.6.1. Each monthly Progress Report shall be due to County by the tenth (10th) day of the following month.

5.1.7. Duty to Comply With Project Standards and Criteria. The Project Manager shall monitor Construction Manager's Work for compliance with Project standards and criteria, and may make recommendations and comments regarding the Work, solely for the protection of the County. However, Construction Manager acknowledges that any such monitoring or recommendations by the Project Manager, or any failure of the Project Manager to monitor or make recommendations, shall not relieve the Construction Manager of any of its obligations under this Contract. Any comments or suggestions to the Construction Manager by the Project Manager, if adopted and followed by the Construction Manager, shall not relieve the Construction Manager of its sole authority and responsibility for the adequacy and accuracy of its professional, design, development, management and/or construction services, in accordance with generally accepted architectural, engineering, development and/or construction practices, and this Contract.

5.1.8. Cumulative Responsibilities, Duties, and Obligations. The responsibilities, duties and obligations imposed upon Construction Manager by this Contract, and the rights and remedies available to the County hereunder, shall be in addition to, and not a limitation of, any otherwise imposed or available by law, statute, regulation, code or ordinance.

5.1.9. Construction Manager's Personnel.

5.1.9.1. Qualified Personnel. All professional and consulting services shall be performed by the Professionals and qualified Subconsultants selected and paid and retained by Construction Manager. All construction services shall be performed by Construction Manager's qualified personnel or qualified Subcontractors selected and paid and retained by Construction Manager or by its Subcontractors. Construction Manager agrees, with respect to all Work to be provided and performed relating to professional services which, under Florida Statutes, require a license, certificate of authorization or other form of legal entitlement to practice such services, that it, its Subconsultants and Professionals shall employ and/or retain only personnel who are experienced, licensed, certified and legally qualified to perform all professional and consulting services to be provided pursuant to this Contract.

5.1.9.2. Responsibility for Personnel's Performance. Construction Manager shall be responsible to the County for acts and omissions of Construction Manager and Construction Manager's agents, employees, Professionals, Subconsultants, Subcontractors, and all other parties in privity of Contract with Construction Manager and/or its Professionals, Subconsultants, or Subcontractors, which provide and/or perform any portion of the Work, including their agents and employees.

5.1.9.3. Construction Manager's Project Officer. Construction Manager agrees to employ and designate, in writing, a qualified (and, if required by law, a licensed) Professional to serve as Construction Manager's Project Officer, who shall be approved by the County. The Project Officer shall be authorized and responsible to act on behalf of Construction Manager and shall have full authority to bind and obligate Construction Manager on any matter arising under this Contract, unless substitute arrangements or individuals have been furnished to and approved by the County in writing. The Project Officer shall be responsible for acting on Construction Manager's behalf to administer, coordinate and to interpret all aspects of the Work to be provided and performed under this Contract and to otherwise manage the contractual provisions and requirements set forth in this Contract, and all Change Order(s) issued hereunder. Construction Manager agrees that the Project Officer shall devote whatever time is required to satisfactorily direct, supervise, coordinate and manage the Work provided and performed by Construction Manager under this Contract.

5.1.9.4. Removal of Personnel. Construction Manager agrees that, within ten (10) business days of receipt of a written request from County, which is based upon grounds of nonperformance, or in the case of illegal activity two (2) business days, to promptly remove and replace Construction Manager's Project Officer, or any other personnel employed or retained by Construction Manager, or its Professionals, Subconsultants, or Subcontractors engaged by Construction Manager to provide and/or perform the Work, or any portion thereof. Any proposed substitution shall be subject to County's prior written consent and said substitution shall be at no additional cost to the County. Notwithstanding the foregoing, nothing herein shall interfere nor be deemed to interfere with the right of Construction Manager, or its Professionals, Subconsultants, or Subcontractors to terminate its or their employees, or with any employee's employment or right to terminate his or her employment with Construction Manager or its Professionals, Subconsultants, or Subcontractors. Construction Manager further agrees not to remove or reassign any members of its "Proposed Team" identified in its Proposal submitted in response to the RFP during the term of this Contract without first presenting explanations therefore and obtaining the County's prior written consent.

5.1.9.5. Adequate Staffing for Timely Accomplishment of Work. Construction Manager agrees to employ, engage, retain and/or assign an adequate number of personnel, and work additional shifts, if necessary, throughout the period of this Contract so that all Work will be provided, performed, and completed in a timely and diligent manner in accordance with the Project Schedule and this Contract.

5.1.10. Coordination. Construction Manager shall be responsible for the management, coordination and supervision of all construction means, methods, techniques, sequences, and procedures for completion of the Work.

5.1.11. Tests and Inspections. Construction Manager shall procure and furnish, as a cost of the Work, all required tests and inspections for the Project, including but not limited to, structural, mechanical, chemical, electrical, geotechnical, construction, materials, and other laboratory or on-Site tests, inspections and reports obtained and necessary for completion of construction. Such testing services shall be provided by qualified testing subconsultants independent of Construction Manager and acceptable to the County. A testing program meeting the requirements for all Construction Work shall be clearly described in the Final Construction Documents.

5.1.12.1. If the Contract or laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than the Construction Manager, the Construction Manager shall coordinate and secure same.

5.1.12.2. Construction Manager shall furnish the Project Manager with all test and inspection reports. For all inspections, tests, and approvals on any Work prepared, performed, or assembled away from the Site, the Construction Manager shall furnish the Project Manager with the required certificates of inspection, testing, or approval. All tests will be in accordance with the methods prescribed by the American Society for Testing and Materials (ASTM) or such other organization(s) as may be appropriate to the particular requirement of the law or the Contract.

5.1.12.3. The County may, at any time, and at its option, obtain independent testing and inspections of the Work or any portion thereof. In such event, the Construction Manager shall provide forty-eight (48) hours' Notice to the Project Manager of readiness of the Work to be so tested and/or inspected and shall provide the testing agency prompt and full access to the Work. If the County's independent testing and inspection indicates materials or Work in place that fail to pass acceptability tests, then Construction Manager shall correct such materials or Work until acceptable test results are obtained. The costs to correct said materials or Work, as well as the costs of all such failed tests and re-tests, shall be borne solely by the Construction Manager.

5.1.12.4. Neither observations by the Project Manager nor inspections, tests, or approvals by persons other than the Construction Manager shall relieve the Construction Manager of its obligations to perform the Work in accordance with the requirements of the Contract.

5.1.13. Uncovering the Work.

5.1.13.1. If any Work required to be inspected, tested or approved is covered contrary to the request of the Project Manager, the Work shall, if requested by the Project

Manager, be uncovered for observation, inspection, testing or approval and replaced at the Construction Manager's expense.

5.1.13.2. If any Work has been covered which the Project Manager has not specifically requested to observe, and if the Project Manager considers it necessary or advisable that the covered Work be inspected or tested by others, the Construction Manager, upon written request of the Project Manager, shall uncover, expose, or otherwise make available for observation, inspection, or testing that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is Defective, the Construction Manager shall bear the expense of such uncovering, exposure, observation, inspection, testing, and satisfactory reconstruction. If, however, such Work is not found to be Defective, the Construction Manager may be allowed an adjustment in the GMP or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction, if it makes a claim in accordance with the requirements of this Contract.

5.1.14. Patents, Fees, and Royalties. The Construction Manager shall pay all license fees and royalties and assume all costs associated with any invention, design, process, or device which is the subject of patent rights or copyrights held by others and is necessary for completion of the Work required by this Contract.

5.1.15. Protection of Persons and Property.

5.1.15.1. Construction Manager shall be solely responsible for initiating, maintaining, and providing supervision of safety precautions and programs in connection with the Work including traffic control. Construction Manager shall take precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- (i) Employees of the Construction Manager and its Professionals, Subconsultants, and Subcontractors, and any other persons on or about the Site, including but not limited to agents, employees and independent contractors of County, User Agency and of any other governmental authority or agency; and
- (ii) The Work and the Project, including any and all materials and equipment to be incorporated therein; and
- (iii) Other property at or adjacent to the Site, or any portion thereof.

5.1.15.2. The Construction Manager shall comply with all applicable laws, ordinances, rules, regulations, and orders 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, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. Construction Manager shall notify owners of adjacent property and utilities when execution of Work may affect them prior to start of Work. All damage, injury, or loss to any property caused directly or indirectly, in whole or in part, by the Construction Manager, any Subcontractors, anyone directly or

indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by the Construction Manager.

5.1.15.3. The Construction Manager shall designate a responsible member of its organization whose duty shall be the prevention of accidents at the Site. During construction, this person shall be the Construction Manager's on-site superintendent unless otherwise designated in writing by the Construction Manager to the Project Manager.

5.1.15.4. The Construction Manager shall immediately notify the Project Manager of all events involving personal injuries to any person on the Site, whether or not such person was engaged in the construction of the Project, or resulting in property damage of any amount, and shall file a written report on such injury or property damage with the Project Manager within five (5) days of the occurrence.

5.1.15.5. In emergencies affecting the safety of persons, the Work, or property at the Site or adjacent thereto, the Construction Manager is obligated to prevent or mitigate threatened damage, injury, or loss. Construction Manager shall give the Project Manager written notice of the emergency situation and actions taken within 24 hours of the incident by Construction Manager to mitigate any damages, injuries or loss.

5.1.16. Security. During Construction Work and through the Substantial Completion date, Construction Manager shall be responsible for taking reasonable actions required for keeping the Site and the Project, as well as all materials located on or off the Site, secure from damage or theft. Construction Manager agrees to repair any damage to the Site or the Project and to replace any materials damaged, lost or stolen from the Site or Project at its sole expense, unless said loss is covered by an applicable insurance policy.

5.1.17. Substitute Materials and Equipment. If the Construction Manager wishes to furnish or use a proposed substitute of materials or equipment after award of the Contract, it shall make written application to the Project Manager for consideration of such substitute. Requests for substitutions shall be subject to review and approval by the County and the Project Manager. No substitute shall be incorporated into the Construction Documents or ordered or installed without the prior written approval from the Project Manager. In addition to the information described below, the application shall contain an itemized estimate of all costs or credits that may result directly or indirectly from acceptance of such substitute, including costs of redesign, delays and maintenance all of which shall be considered by the Project Manager in evaluating the proposed substitute. Approval of any change in costs as a result of acceptance of the substitute by the Project Manager shall be by adjustment within the GMP or by Change Order.

5.1.17.1. All applications for substitution by the Construction Manager shall be reviewed and approved by the Engineer of Record prior to its submittal to the Project Manager.

5.1.17.2. For proposed substitutions during design, the Construction Manager shall certify in writing that the proposed substitute will perform adequately the duties imposed by the Design Criteria Package and be similar and of Equal substance or quality to that specified.

5.1.17.3. For proposed substitutions during construction, the Construction Manager and Engineer of Record shall certify in writing that the proposed substitute will perform the duties imposed by both the Design Criteria Package and the Final Construction Documents and shall be equal or equivalent to that specified.

5.1.18. Use of the Site.

5.1.18.1. The Construction Manager shall confine its equipment, the storage of materials and equipment, and the operations of its workers to the areas permitted by law, ordinances, permits, or the requirements of the Contract. The Construction Manager shall not unreasonably encumber the Site with materials and equipment. Any loss, damage or theft of any equipment or materials of Construction Manager or any Subcontractor is solely at the risk of the Construction Manager.

5.1.18.2. The Construction Manager shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure. The Construction Manager shall not subject any part of the Project or adjacent property to stresses or pressures that will endanger them. Prior to beginning Work on the Project, Construction Manager shall supply to the Project Manager a list of all employees, Subcontractors, and Subconsultants who will be working on the Site and shall state the anticipated duration of each individual's Work on the Site. Construction Manager shall update this list from time to time, as necessary, to reflect any changes to the list during the course of the Work. Construction Manager shall be responsible for securing the Site prior to departure each day.

5.1.19. Submittals and Samples.

5.1.19.1. The Construction Manager shall provide Submittals at a time sufficiently early enough to allow review, and to accommodate the rate of construction progress as indicated in the Project Schedule.

5.1.19.2. After checking and verifying all field measurements, the Construction Manager shall stamp with verification approval and promptly submit to the Project Manager for review. The Project Manager will work in conjunction with the County's design professional(s) and shall review and either reject or provide stamped approval of all Submittals and samples required by the Contract. The Construction Manager shall stamp the Submittal to certify in writing that the Submittal will perform the duties imposed by the Final Construction Documents. If rejected by the Project Manager, the Submittal shall be corrected, with the revisions to the former Submittal highlighted prior to resubmittal. The Project Manager, working with the design professional(s), shall review the resubmittal and either reject or provide stamped approval. The data shown on or with

the Submittals shall be complete with respect to dimensions, design criteria, materials and any other information necessary to enable the Project Manager and the design professional(s) to review the Submittal as required. At the time of each submission, the Construction Manager shall give notice to the Project Manager of all deviations that the Submittal or sample may have from the requirements of the Contract.

5.1.19.3. The Project Manager, working with the design professional(s), will review and either approve or reject each Submittal and sample. The Project Manager's approval will not relieve the Construction Manager of its responsibility for any deviations from the requirements of the Final Construction Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The Construction Manager shall make any corrections required by the Project Manager and resubmit the required number of corrected copies until approved. Except as otherwise provided within the Contract, the Project Manager will return prints of each Submittal to the Construction Manager, with comments noted thereon, within 14 calendar days following their receipt by the Project Manager.

5.1.19.4. The Project Manager, working with the design professional(s), shall review and either approve or reject all Submittals and samples. The Project Manager's approval shall not relieve the Construction Manager of its responsibility to secure separate approvals of applicable Professional(s), or for any deviations from the requirements of the Final Construction Documents.

5.1.19.5. No Work requiring a Submittal or sample submission shall commence until the submission has been approved by the Project Manager. Rejection of Submittals by the Project Manager shall not relieve the Construction Manager of its responsibility to meet the milestones within the Project Schedule. A copy of each approved Submittal and each approved sample shall be kept in good order by the Construction Manager at the Site and shall be available to the Project Manager.

5.1.19.6. To facilitate review, the Construction Manager shall number consecutively each Submittal. This numbering system shall be in order of Submittal. Any resubmittal required shall have the same number as the original Submittal followed by a notation signifying that this is a second or third Submittal (e.g. #14 2nd Submittal). All Submittals shall provide a space for the Construction Manager's and Project Manager's review stamp, preferably on the first page. In addition, all Submittals shall contain the following notation placed by the Construction Manager:

Project Number and Name: _____
Submittal Number: _____
Deviations: _____
None: _____
As listed: _____
Reference Specification Number: _____
Reference Drawing Number: _____
Space Requirement: _____

As designed: _____
Different, As listed: _____
CONSTRUCTION MANAGER has reviewed and submitted for approval.

Signature: _____
Date: _____

The review of a particular Submittal will be undertaken only if the above such information is provided.

5.1.20. The County may perform additional Work related to the Project with its own personnel.

5.1.20.1. Construction Manager shall perform all cutting, fitting, and patching of its Work that may be required to make its several parts come together properly, and fit it to receive or be received by the Work of other contractors or the County. Construction Manager shall not endanger any Work of others by cutting, excavating, or otherwise altering such other Work and will only cut or alter such other Work with the written consent of the Project Manager, and only if such alteration will not increase the GMP or extend the Project Schedule.

5.1.21. Binding the Professionals, Subconsultants, and Subcontractors. The Construction Manager agrees to bind specifically every Professional, Subconsultant, and Subcontractor to the applicable terms and conditions of the Contract for the benefit of the County. All Work performed for the Construction Manager by a Professional, Subconsultant or Subcontractor shall be pursuant to an appropriate written Contract between the Construction Manager and the Professional, Subconsultant or Subcontractor as applicable. The County shall be expressly named as a third-party beneficiary to any Contract between the Construction Manager and its Professional and Subconsultant.

5.1.22. All work for this project shall be performed during regular business hours. A regular workday shall be considered to be a maximum of ten (10) hours duration. The cost for inspection time for work performed on weekends, holidays, or in excess of ten (10) hours, will be billed to the Construction Manager at the prevailing wage plus overhead costs for those persons involved. The exception would be any work required for the safety or protection of the public.

5.1.22.1. A working day is any day within the period between the start of the Contract time and the date provided in the Contract for completion or upon field acceptance by the County of all work provided for in the Contract, other than:

- (i) Saturday
- (ii) Sunday
- (iii) Any day designated as a holiday by the County

- (iv) Any day the Construction Manager is prevented from working during the first five (5) hours of the workday, with at least 60 percent of the normal work force, due to inclement weather.

5.1.22.2. Request for planned overtime by the Construction Manager must be submitted in writing to the County twenty four (24) hours in advance and may not proceed without the County's written approval.

5.2. Professional Services at Construction Administration Phase.

5.2.1. The Construction Phase shall commence upon issuance of Notice To Proceed with Construction Services by County. The Construction Manager and each appropriate Professional shall provide Construction Administration services as provided herein, as required by the Final Construction Documents, and as required by authorities having jurisdiction over the Project.

5.2.2. The Construction Manager shall visit the Site at intervals appropriate to the stage of construction, or as otherwise required by County and the Final Construction Documents, to become generally familiar with the progress and quality of the Work during the Construction Phase, and to determine in general if the Work is proceeding in accordance with the Final Construction Documents. On the basis of such on-Site observations, the Construction Manager shall keep the County informed by means of regular written status reports of the progress and quality of the Work and shall guard the County against defects and deficiencies in the execution of the Work.

5.2.3. The submission of an Application for Payment by the Construction Manager shall constitute a representation by the Construction Manager that the construction Work has progressed to the point indicated and that the construction Work is in accordance with the Final Construction Documents.

5.2.4. The Construction Manager shall be required to identify Work that is not in accordance with the Final Construction Documents and the Design Criteria Package and to give written notice thereof to the Project Manager. Whenever, in the opinion of the Project Manager, it is necessary or advisable to ensure the Work's conformance with the intent of the Final Construction Documents, the Construction Manager shall have a duty to require a special inspection or testing of the Work at no additional cost to the County and at no delay to the Project Schedule.

5.2.5. Prior to incorporation into the Work, and prior to approval by the County, the appropriate Professional(s) shall review and approve all Submittals (including shop drawings, samples, and test reports), substitutions, and Change of Work proposals for compliance with the design intent and governing laws, codes, regulations, and ordinances, and if applicable, shall perform activities necessary for Construction Manager to obtain approvals for such from authorities having jurisdiction over the Project.

5.2.6. The Engineer of Record shall approve certifications of Substantial Completion.

5.2.7. Prior to Final Completion, the appropriate Professional(s) shall review the completed Punch List Work for conformance with the Final Construction Documents, and the Construction Manager shall certify to County in writing that the Work, including all Punch List items, has been completed in accordance with the Final Construction Documents, the Contract, all Change Orders, and all applicable laws, codes, regulations and ordinances. Such certification shall be subject to acceptance by County.

5.2.8. The appropriate Professional(s) shall review warranty Work provided by the Construction Manager for compliance with the Final Construction Documents during the term of this Contract, including any warranty periods set forth herein.

5.2.9. The appropriate Professional(s) shall review and approve the Construction Manager's record documents and Final As-Built Construction Documents prior to submittal to the County.

5.2.10. In addition to other deliverables required during the Construction Phase as described in other portions of this Contract, the Construction Manager shall submit the following deliverables with the assistance of the appropriate Professional(s), as required by this Contract and the Final Construction Documents:

- (i) Project meeting minutes which are required for each meeting attended, to include a listing of attachments and attendees.
- (ii) Reports of all field meetings and visits.
- (iii) Monthly construction status reports indicating progress of the Work, deficiencies observed, and actions taken or required.
- (iv) Shop Drawings, Substitutions, and other Submittals.
- (v) Monthly logs of all Requests for Information, shop drawing logs, and action item lists.
- (vi) Monthly logs indicating the status of all Proposed Change Requests and Change Orders.
- (vii) Monthly schedule of all tests and inspections, and copies of all resulting reports.
- (viii) Safety meeting minutes.

5.3. Duties and Obligations of Construction Manager Specifically Related to Construction Service.

5.3.1. Critical Path Method ("CMP") Construction Schedule. The Construction Phase shall commence with issuance of Notice To Proceed with Construction Services by County. Subsequent to approval of Final Construction Documents and prior to the commencement of construction, Construction Manager shall provide a CPM construction schedule illustrating the construction portion(s) of the Project Schedule. The CPM Schedule shall be prepared in accordance with the standards outlined in the Associated

General Contractors' Publication, "The Use of CPM in Construction," and shall reflect timely completion in accordance with the Contract. During the Construction Phase, the CPM Schedule shall be updated on a monthly basis and submitted with the monthly Progress Report.

5.3.2. Final Schedule of Values. Prior to Issuance of Notice To Proceed with Construction Services, Construction Manager shall submit a Final Schedule of Values, in CSI format, for review and approval by County.

5.3.3. Temporary Utilities. Construction Manager shall provide all facilities and equipment that are necessary and adequate for the performance of the Work, and which conform to the requirements of all applicable codes and authorities having or claiming jurisdiction, including but not limited to, power and lighting, water supply, sanitation and communications.

5.3.4. Supervision and Superintendence.

5.3.4.1. The Construction Manager shall supervise and direct the Work efficiently and with its best skill and attention. The Construction Manager shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction unless specifically addressed otherwise in the Contract. The Construction Manager shall be responsible for seeing that the finished Work complies with the Contract. The Construction Manager shall cooperate with, and be responsible for coordination of the Work with, other contractors and/or utilities at the Site. The Construction Manager shall attend meetings as requested by the Project Manager, in addition to those required by this Contract.

5.3.4.2. The Construction Manager shall designate a competent resident superintendent to supervise the Work at all times during its progress and who shall not be replaced without written notice to the Project Manager except under extraordinary circumstances. The superintendent shall be the Construction Manager's representative at the Site and shall have authority to act on behalf of the Construction Manager. All written communications given to the superintendent shall be as binding as if given to the Construction Manager.

5.3.5. Labor, Materials, and Equipment. The Construction Manager shall provide and pay for competent, suitable, qualified personnel to survey and lay out the Work and perform construction as required by the Contract. The Construction Manager shall at all times maintain good discipline and order on the Site.

5.3.6. Division of Subcontracts. The divisions and sections of the specifications and the identifications of any drawings that make up the Final Construction Documents shall not control the Construction Manager in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

5.3.7. Identification of Subcontractors, Vendors, and Suppliers. After receipt of the Notice To Proceed with Construction Services by County, the Construction Manager shall submit to the Project Manager a list of all Subcontractors and all such other persons and organizations whom the Construction Manager intends to utilize in performing portions of the Work. The Construction Manager shall indicate the corresponding line item as shown on the Final Schedule of Values that each Subcontractor will be working under.

5.3.8. Reference Points. The Construction Manager shall establish on the Drawings such general reference points as in its judgment will enable the Construction Manager to proceed with construction Work. Construction Manager shall establish the coordinates and elevations of two permanent benchmarks at the Site. The Construction Manager shall be responsible for the layout of the Work, shall protect and preserve the established reference points, and shall make no changes or relocations without the prior written approval of the Project Manager. The Construction Manager shall within forty-eight (48) hours give notice to the Project Manager whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. The Construction Manager shall replace and accurately relocate all reference points so lost, destroyed, or moved by utilizing a registered land surveyor in compliance with all of the requirements of Chapter 472, Florida Statutes.

5.3.9. Existing Utilities. Prior to commencing the Construction Phase, the Construction Manager shall be responsible for verification and location of all underground utilities to the extent that the utilities can be reasonably located. The Construction Manager shall, at a minimum, contact all utility companies for the purpose of determining all utilities located by the utility companies. Furthermore, the Construction Manager shall be responsible for discovery of existing underground installations, in advance of excavating or trenching, by contacting all local utilities, and by prospecting to ascertain that the utilities shown or otherwise identified are in the area shown. The County shall not be liable for any damage or delay caused by any utility line that was or could have been identified by the Construction Manager using reasonable means. If Construction Manager fully performs its due diligence investigation with respect to existing utilities prior to the commencement of Work, and Construction Manager is subsequently delayed by an unknown existing utility conflict, the Construction Manager may make a claim in accordance with the requirements of the Contract for an extension of time and/or reasonable compensation but in no event will the Construction Manager be entitled to any damages from the County.

5.3.10. Inspection of Construction. In accordance with the Construction Manager's Site Safety Plan, Construction Manager shall permit the County, its agents, employees, representatives and subconsultants, and any interested governmental authority or regulatory agency, to enter upon the Site at any time to inspect the Work, the Project and all materials used or to be used in the construction of the Project that may be stored on the Site. The Construction Manager shall provide proper facilities for such access and observation of the Work and also for any inspection or testing.

5.3.11. Duty to Respond to Request for Proposals. Construction Manager shall promptly prepare and submit to the County, at County's request, reasonable Change of Work Proposals.

5.3.12. Protection of Existing Facilities. Construction Manager shall protect all existing utilities, and any portions of the Project, at or adjacent to the Site which are not designated for removal. If required by the Project Manager or any authorities having or claiming jurisdiction, the Construction Manager shall restore damaged or temporarily relocated utilities and affected areas to a condition equal to or better than they were prior to such damage or temporary relocation.

5.3.13. Quality of Materials and Equipment. All materials and equipment shall be new and of good quality, unless otherwise provided in the Contract. If required by the Project Manager, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

5.3.14. Comply With Manufacturer Instructions. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processors.

5.3.15. Cleaning Up. The Construction Manager shall maintain the Site free from accumulations of waste materials, rubbish, and other debris resulting from the Work, on a daily basis or as required. At the completion of the Work, the Construction Manager shall remove all waste materials, rubbish, and debris from the Site, as well as all tools, construction equipment and machinery and surplus materials, and will leave the Site clean and ready for occupancy by the County. In addition to any other rights available to County under the Contract, the Construction Manager's failure to maintain the Site may result in withholding of any amounts due Construction Manager. The Construction Manager will restore to original condition those portions of the Site not designated for alteration by the Contract.

5.3.16. Record Documents. The Construction Manager shall keep at the Site and in good order one record copy of the Final Construction Documents and all Shop Drawings. These documents shall be annotated on a continuing basis to show all changes made during the construction process. Construction Manager shall provide record documents whenever requested. These shall be available to the Project Manager for inspection during the Construction Phase and shall be submitted to the County prior to acceptance of Final Completion by the County.

5.4. Responsibility of Construction Manager for Quality and Conformance of Work. Construction Manager represents that it shall be responsible for:

- (i) The functional soundness, structural integrity and accuracy of the Work, the Project and the Final Construction Documents; and

- (ii) The professional quality, technical adequacy, accuracy and legal sufficiency and compliance of the Work, the Project and the Final Construction Documents; and
- (iii) Timely completion and coordination of the Project and the Final Construction Documents; and
- (iv) Other Work and materials performed, provided, and/or furnished by Construction Manager or its Professionals, Subconsultants, and/or Subcontractors.

5.4.1. Correction of Work After Final Completion. County agrees to promptly provide Construction Manager with written notice of its discovery of defective or non-conforming Work after the Final Completion. The Construction Manager shall promptly, without cost to the County and in accordance with the County's written instructions, either correct such Defective or non-conforming Work, or remove it from the Site and replace it with non-Defective Work. If the Construction Manager does not promptly comply with the terms of such instructions, the County may have the Defective Work corrected, removed, or replaced. The Construction Manager will pay the actual cost of correction, removal or replacement of the Defective Work.

5.4.2. Acceptance of Defective Work. If, instead of requiring correction or removal and replacement of Defective Work the County prefers to accept it, the County may do so. In such case, if acceptance occurs prior to approval of Final Payment, a Change Order incorporating the necessary revisions in the Contract, including an appropriate reduction in the GMP, shall be issued. If the acceptance occurs after approval of Final Payment, the Construction Manager shall pay to the County an appropriate sum to compensate for the defect in the Work.

5.4.3. Construction Manager's Duty to Proceed with Work in the Event of Dispute. In the event of a dispute as to the character, quality, amount or value of the Work, the County shall have the right to decide such issues and the Construction Manager shall proceed diligently with performance of the Work as directed by the County, provided Construction Manager may reserve its rights to object to County's decision and directive by so notifying the County in writing.

5.4.4. County's Review and Approval of Final Construction Documents Shall Not Relieve Construction Manager of Responsibility. County's receipt, review, and approval of the Final Construction Documents and any incidental professional services, Work and materials furnished hereunder by Construction Manager, or its Professionals, Subconsultants, or Subcontractors, shall not in any way relieve Construction Manager of its responsibility for the completion of work in accordance with the Contract Documents.

5.4.5. County's Inspection and Observation of Construction Shall not Relieve Construction Manager of Responsibility. County's inspection and observation of Defective Work, absent an express written waiver of such defect in clear and unambiguous terms, shall not relieve Construction Manager of responsibility for the

adequacy, sufficiency, efficacy, completeness and/or accuracy of the Work, or any portion thereof.

5.4.6. County's Payment Shall Not Relieve Construction Manager of Responsibility. County's payment for any of Construction Manager's Work shall not be intended, and shall not be construed, to operate as a waiver of any of the County's rights under this Contract, or any cause of action it may have arising out of Construction Manager's performance or non-performance under this Contract.

ARTICLE 6.

COST OF WORK AND METHOD OF PAYMENT

6.1. Phase I – Preconstruction Services and Phase II - Construction Services shall be paid in accordance with **Exhibit A** and the terms of the Contract, including any amendments.

6.2. Schedule of Values.

6.2.1. Prior to Notice to Proceed with the Phase II, the Construction Manager shall submit a Final Schedule of Values for County's review and approval. The Parties acknowledge that the Final Schedule of Values shall be based upon the Final Scope of Work and shall be within the GMP. The Construction Manager shall update the Schedule of Values in form, content and detail as deemed appropriate by the County, during the Construction Phase. The County reserves the right to withhold all Notices to Proceed pending its approval of the applicable Final Schedule of Values.

6.2.2. The Final Schedule of Values shall be satisfactory in form and substance to the Project Manager and include a list or description of all activities of the Work. The Final Schedule of Values shall subdivide the Work into component parts in sufficient detail to allow County to use as the basis for measurement of quantities in place and to calculate amounts due based on percentage of completion for payments during construction. Unsupported or unreasonable allocation of costs to one activity on the Final Schedule of Values shall be justification for rejection by County of such Final Schedule of Values.

6.2.3. The approved Final Schedule of Values shall accompany each Application for Payment and shall delineate the approved values, previous percentage complete approved, current percentage complete requested, and value of percentage requested.

6.3. Application for Payment.

6.3.1. Applications for Payment for Phase I shall be made monthly based on the County approved Final Schedule of Values.

6.3.2. Applications for Payment for Phase II shall be submitted on a monthly basis. The Construction Manager shall prepare each Application for Payment and submit them to the Project Manager. The Project Manager's response to the Application for

Payment shall be provided within seven (7) days after receipt. The Application for Payment, when submitted, shall be filled out accurately and signed by the Construction Manager, covering Work completed as of the date of the Application and shall be supported by such data as required by the County.

The Construction Manager shall certify in writing that all Professionals, Subconsultants, Subcontractors, and suppliers have been paid for acceptable Work and materials from previous progress payments received (less any retainage) prior to receipt of any further progress payments.

The Construction Manager shall submit an Application for Payment on the form(s) agreed upon with Project Manager and which will include the aforementioned certification. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by such supporting data as will establish the County's title to the material and equipment and protect its interest therein, including applicable insurance.

6.3.3. All Applications for Payment by Construction Manager during the Construction Phase shall be accompanied by Construction Manager's certification as to the percentage of completion of the Work-in-place on a trade-by-trade or subcontract-by-subcontract basis, and by written evidence satisfactory to County that the Professionals, Subconsultants, and Subcontractors performing or providing any portion of the Work during the immediately preceding payment period have been paid in full.

6.3.4. Each Application for Payment shall contain a sufficiently detailed work description and breakdown of charges for the preceding thirty (30) day period or other agreed upon milestone. Such Application shall be prepared using an agreed upon format such as a standard industry payment application form. Supporting documentation must be included to the extent required under Florida Statutes, any implementing rules, or other requirements of County.

6.4. Payment for Work Performed.

6.4.1. Payment for Construction Work. Following commencement of construction of the Work, County shall pay Construction Manager on a percentage of construction completion based on Work in place performed by Construction Manager.

6.5. Retainage.

6.5.1. All progress payments shall be subject to a 5% retainage. All retainage shall be requested in the Final Payment after final acceptance of the Work by the County.

6.6. Approval and Time of Payments.

6.6.1. All Applications for Payment including Final Payment are subject to the review and approval of the County, and in the event of any dispute between the County and Construction Manager as to the percentage of completion indicated therein, the

Project Manager shall issue his or her opinion as to such percentage of completion, which opinion shall be the basis upon which payment shall be made.

6.6.2. County shall make payments in accordance with Sections 218.70 through 218.80, Florida Statutes, the Local Government Prompt Payment Act.

6.6.3. The Project Manager may refuse to approve the whole payment or any part of any payment if, in the Project Manager's opinion, he/she is unable to make the representation that the Application is acceptable to the County. The Project Manager may also refuse to approve any such Application, or nullify any such payment previously approved, to such extent as may be necessary in the Project Manager's opinion to protect the County because of the following:

- (i) Subsequently discovered evidence or the results of subsequent inspections or tests, indicating Defective Work;
- (ii) The Work or any portion thereof is Defective;
- (iii) The CPM schedule, and regular updates to the Work Schedule, as required in this Contract, have not been submitted or accepted;
- (iv) Claims have been filed against the County for which the Construction Manager may be liable;
- (v) The County has been required to correct Defective Work or complete the Work and has not completed the correction Work;
- (vi) The Work, or a portion thereof, was executed unsatisfactorily, or Construction Manager failed to clean up as required by this Contract, or failed to control traffic or dust, or was otherwise, not in compliance with this Contract; or
- (vii) There is any uncured Default under this Contract.

6.7. Prerequisites to Progress Payments. Payment with respect to each and every Application for Payment shall be contingent upon the occurrence of the following conditions precedent, and such other conditions precedent as County may require pursuant to the terms of this Contract:

- (i) Application for Payment in form and content satisfactory to County pursuant to this Contract; and
- (ii) Written certification by the Construction Manager pertaining to the Work covered by the respective Application for Payment stating that the portion of the Work then completed has been constructed in a good and workmanlike manner and in strict compliance with the Final Construction Documents and all applicable laws, ordinances and building codes; and
- (iii) There are no claims outstanding against, for or in connection with any portion of the Work, the project or site, or any portion thereof; and
- (iv) All governmental permits, approvals, consents, licenses, inspections and other authorizations required in connection with the construction of that portion of the Work for which such Application for Payment is being made, have been obtained and are in full force and effect; and

- (v) All funds previously disbursed by County have been disbursed by Construction Manager in accordance with the Schedules of Values; and
- (vi) All funds previously disbursed by County to Construction Manager have been paid by Construction Manager to Construction Manager's Subcontractors, Professionals, and Subcontractors, and have not been withheld for any purpose; and
- (vii) Construction Manager has certified to County that all outstanding claims for Work, including labor, services, materials and equipment furnished by any of its Subcontractors, Professionals, and Subconsultants have been paid up to and through the date of the immediately preceding Application for Payment.

6.8. Application for Final Payment. After the Certificate of Final Completion for the Work has been approved and issued by the Project Manager, and the final Change Order, if any, has been approved by the Board, the Construction Manager may make Application for Final Payment following the procedure for Work-in-progress payments. The Application for Final Payment shall be accompanied by the Construction Manager's Affidavit of Payment of Debts and Claims, Certificate of Final Completion, Certificate of Occupancy and the Consent of Surety to Final Payment, all submitted on forms to be provided by the County, and such other documents as County may reasonably require. Where Certificates of Beneficial Occupancy have been issued for portions of the Work in accordance with this Contract, they shall be maintained in the project file.

6.9. Documentation Required for Final Payment. In addition to the documentation required above, the following documentation shall be submitted by Construction Manager, subject to approval of the County, in order for Construction Manager to receive payment under Construction Manager's Final Application for Payment:

6.9.1. Certificate of Compliance and Statement of Guarantee. A written statement(s) from the appropriate Professional(s) shall be addressed to and provided to County certifying and warranting that:

- (i) To the best of the Professional(s) knowledge and belief, the Work complies with all applicable governmental laws, codes, ordinances, decrees and regulations, including, but not limited to, all permit requirements, and regulations,
- (ii) To the best of the Professional(s) knowledge and belief, the Work has been completed in a good and workmanlike manner in accordance with the Final Construction Documents.

6.9.2. Operating Instructions and Warranties. Two completed bound sets of operating instructions, maintenance instructions, and test reports.

6.9.3. Consent of Surety. A letter of consent, or a written waiver of such consent from the surety(s), unless waived by the surety(s) that issued the payment and

performance bond(s) for the Work, consenting to such Final Payment, provided that in so consenting, or in so waiving its consent, such surety(s) shall not be relieved of any obligations under such payment and performance bond(s).

6.9.4. Project Record Documents. As described in the Scope of Services.

6.9.5. Delivery of Permits. Originals, if available, or true copies of all licenses, permits and approvals required by all governmental agencies having or claiming jurisdiction over the Work for the full and uninterrupted use, occupancy and operation of the Work.

6.9.6. All other documents required by this Contract.

6.10. Stored Materials. No payment or compensation for materials purchased by Construction Manager but not yet installed or incorporated into the Work shall be made without the County's prior written approval of the conditions under which such materials are purchased and stored. The County's prior written approval shall be provided in a timely manner and not unreasonably withheld. In no event shall any such payment or compensation be made unless the materials involved have been delivered to the Site or stored with a bonded warehouseman, clearly labeled and identified, with satisfactory written evidence of security, insurance and suitable storage. Construction Manager shall provide the County, in connection with such materials, a copy of a bill of sale or other evidence of title in Construction Manager's name, together with a copy of Uniform Commercial Code (UCC) searches against Construction Manager and the warehouseman, if applicable, indicating the existence of no liens or claims which may affect such materials.

6.11. Clear Title. At such time as Construction Manager receives payment with respect to any and all Work, including materials and equipment, covered by an Application for Payment, whether incorporated in the Work or not, title thereto shall pass to County free and clear of all claims, security interests and encumbrances, and County shall not be required to pay for any Work, including materials or equipment, which is subject to an Contract under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by or upon Construction Manager or any other person. Any liens filed against any portion of the Work, project or site shall be promptly removed, discharged and/or transferred by Construction Manager to other security as a strict condition precedent to any subsequent progress payments or, if applicable, the Final Payment.

6.12. Cost of Claims. If at any time there shall be evidence of any claim for which, if established, the County might become liable, and which is chargeable to Construction Manager, or if Construction Manager shall incur any liability to the County, or the County shall have any claim or demand against Construction Manager, whether or not reduced to judgment or award, of any kind or for any reason, related to or arising out of this Contract, the County shall have the right to retain out of any payment due, or which may become due under this Contract, an amount sufficient to indemnify the County against that portion of the claim as is allocable to the Construction Manager, and to

compensate the County for and fully satisfy such liability, claim or demand. Should any such claim develop after Final Payment has been made, the Construction Manager shall refund to the County all monies that the latter may be compelled to pay in discharging such claims or incurred in collecting said monies from the Construction Manager. This paragraph only refers to claims or such portion of claims as are chargeable and are allocable to the Construction Manager, and/or its officers, agents, servants, employees, volunteers, Subconsultants and Subcontractors.

6.13. Construction Manager's Continuing Obligation. The Construction Manager's obligation to perform the Work and complete the Work in accordance with this Contract shall be absolute. Neither approval of any Work-in-progress or the Final Payment, the issuance of a Certificate of Substantial Completion or a Certificate of Final Completion, any payment by County to Construction Manager, any use or occupancy of the Work or any part thereof by the County, the issuance of a Certificate of Final Completion, any act of acceptance by County, any failure to do so, nor any correction of Defective Work by County shall constitute an acceptance of Work not in accordance with this Contract or relieve Construction Manager in any way of its obligations under this Contract.

6.14. Waiver of Claims. The making and acceptance of Final Payment shall constitute a waiver of any and all claims by the Construction Manager against the County, except for those previously submitted in writing in accordance with the Contract.

6.15. Direct Purchases. County reserves the right, at its option, to consider direct purchase of materials directly for the Work. Upon County's written notice thereof to Construction Manager, Construction Manager shall cooperate with County to allow County, without charge by Construction, to purchase materials directly for the Work and to receive appropriate credits from Construction Manager.

ARTICLE 7.

CHANGES TO THE WORK

7.1. Changes to the Work.

7.1.1. Without invalidating the Contract, the County may at any time or from time to time order additions, deletions, or revisions in the Work. Should the County request Construction Manager to provide and perform changes to the Work for this Project, Construction Manager agrees to provide and perform such changes to the Work in accordance with the covenants, terms, and provisions set forth herein and as a continuation of the Work covered under this Contract. Changes to the Work shall consist of additions, revisions, or deletions to the Work after the Final Construction Documents and Final Schedule of Values have been approved by the County.

7.2. Change Order Procedure for Changes to the Work.

7.2.1. If the County desires to make changes to the Work after establishment of Final Construction Documents, the Project Manager shall provide Construction Manager with a proposal request, identifying the Work to be added, deleted, or revised. Upon receipt of a proposal request from County, the Construction Manager shall promptly submit a written Change of Work Proposal for the changed Work priced in accordance with this Contract. The Construction Manager shall submit a proposed credit for Work to be deleted, which is priced consistent with the Final Schedule of Values. If the Construction Manager proposes changes to the Work after establishment of Final Construction Documents, Construction Manager shall provide County with a Change of Work Proposal priced in accordance with this Article 7. If the proposal request calls only for the deletion of Work, the Project Manager may order the partial suspension of any Work related to the proposed deletion, in which case the Construction Manager must cease performance as directed; the Construction Manager may be entitled to additional compensation or an increase in Contract Time to complete the Contract as a result of any authorized changes to the work, which shall be reflected on the Change Order. The Construction Manager shall not be entitled to claim lost profits on deleted Work. Changed Work shall be performed in accordance with all applicable conditions of the Contract.

7.2.2. Additional Work performed by the Construction Manager without authorization of a Change Order will not entitle the Construction Manager to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency. The effect of this paragraph shall remain paramount and shall prevail irrespective of any conflicting provisions contained in this Contract or elsewhere.

7.2.3. When and if there are changes in the Work to be performed and any mutually agreed upon claim of the Construction Manager for a change in the Contract time, the Project Manager will prepare a written Change Order to be signed by the Construction Manager and processed in accordance with County's Purchasing Code.

7.2.4. It is the Construction Manager's responsibility to notify its Surety of any changes affecting the general scope of the Work, Cost of Work, or Contract Time.

7.2.5. In the absence of agreement as to changes in the Work, the County may, at its sole discretion, issue a unilateral Change Order to the Construction Manager. Pricing of the unilateral Change Order will be in accordance with this Article 7. The Change Order will specify a price, and if applicable, a time extension, determined to be reasonable by the County. If Construction Manager fails to sign such Change Order, the Construction Manager may submit a claim in accordance with this Article 7, but the Construction Manager shall nevertheless be obligated to fully perform the Work as directed by the Change Order.

7.3. Claims by the Construction Manager.

7.3.1. Should the Construction Manager make a claim for an increase in Contract Time, the claim shall be accompanied by an affidavit stating that:

- (i) The claim is made in good faith;
- (ii) The supporting data are accurate and complete to the best of the Construction Manager's knowledge and belief; and
- (iii) The amount requested accurately reflects the Cost of Work adjustment for which the Construction Manager believes the County is liable.

Absent such affidavit, the claim will not be considered. Should any dispute arise, submission of the affidavit shall be a condition precedent to filing a lawsuit.

7.3.2. Any claim by the Construction Manager for an increase in the Contract Time or an increase in the Cost of Work shall be calculated and priced in accordance with this Article 7, shall be in writing, and shall be delivered to the Project Manager within 10 days of the discovery of the occurrence prompting the request for the increase first happening. Written supporting data shall be submitted to the Project Manager within 20 days after such occurrence unless the Project Manager allows additional time. Construction Manager agrees that Claims for increases in contract time or cost of work not provided and substantiated within these time frames are unequivocally and expressly waived.

7.3.3. The Construction Manager shall proceed diligently with performance of the Work as directed by the County, regardless of pending claim actions or disputes.

7.4. Change of Cost of Work. The Cost of Work is as defined in Article 6. All duties, responsibilities, and obligations assigned to or undertaken by the Construction Manager shall be at its sole expense without change in the Contract Price. The Cost of Work may only be increased or decreased by a written Change Order.

7.5. Pricing of Changes to the Work.

7.5.1. The price for changes to the Work shall be determined on the basis of reasonable expenditures and savings of those performing the Work directly attributable to the change and shall be no higher than that prevailing in the area of the Work. The price for changes to the Work shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including Social Security, unemployment insurance and fringe benefits required; workers' compensation insurance; rental value of equipment and machinery at actual rented rate (not to exceed the original cost of the equipment or machinery); cost of additional field personnel directly attributable to the change (cost of personnel already overseeing the Work shall not be included unless the duration of the Work is increased as a result of the change); and fees including those paid to architects, engineers and other professionals and contractors relating directly to the change.

7.5.2. Additional fees paid to architects, engineers and other professionals and/or contractors shall be calculated at the hourly rate of actual wages paid to such personnel times a not-to-exceed multiplier of 2.5. It shall be applied to actual hours

actually, reasonably and necessarily expended by Construction Manager's professional and technical personnel.

7.5.3. The price for Changes to the Work shall not include any of the following:

7.5.3.1. Payroll costs and other compensation of the Construction Manager's officers, executives, principals (of partnership and sole proprietorships), general managers, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the Construction Manager, whether at the Site or in its principal or a branch office for general administration of the Change Order Work, all of which are to be considered administrative costs covered by the Construction Manager's overhead and profit;

7.5.3.2. Fringe benefits;

7.5.3.3. Expenses of Construction Manager's principal and branch offices including the Construction Manager's office at the Site (except for excess costs of office at Site when required because of County's changes in the Work);

7.5.3.4. Any part of the Contractor's capital expenses, including interest on the Construction Manager's capital used for the Change Order Work and charges against the Construction Manager for delinquent payments;

7.5.3.5. Cost of premiums for all bonds and insurance (except for costs of additional bonds and insurance required because of changes in the Work);

7.5.3.6. Costs due to the negligence of the Construction Manager, any Subcontractor or Subconsultant, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property; and

7.5.3.7. Overhead or general expense costs of any kind (other than as provided in Article 7.5.4).

7.5.4. Overhead and Profit. The maximum percentage allowed for the Construction Manager's combined overhead and profit (mark-up) shall be as follows:

7.5.4.1. Overhead and profit shall be applied to costs related to actual construction Work only. No overhead and profit shall be added to direct purchase changes requested by the County for sales tax savings.

7.5.4.2. For all Change Order Work done or to be done by the Construction Manager's own organization, a fixed percentage of the total adjustment to the Cost of Work shall be negotiated with the Project Manager at the Preconstruction Meeting and shall not exceed ten percent.

7.5.4.3. For all Change Order Work done or to be done by Subcontractors, each Subcontractor may add up to ten percent (10%) to its allowable cost of work for combined overhead and profit and the Construction Manager may add up to five percent (5%) to the Subcontractor's allowable cost of work for its combined overhead and profit; provided, however, that the total maximum markup allowed, including but not limited to Construction Manager, Subcontractors, and all lower-tier Subcontractors, shall in no event exceed twenty percent (20%) of allowable costs.

7.5.5. Material and equipment expenses shall be based on those actually reasonably and necessarily expended for the changes to the Work and shall be tied to the prices reflected in the Final Schedule of Values.

7.5.6. For all changes, the Construction Manager shall submit an itemized cost breakdown, together with supporting data in such detail and form as required by the County. When a credit is due, the amount of credit to be allowed by the Construction Manager to the County for any such change which results in a net decrease in cost will be the amount of the actual net decrease in direct cost as determined by the County, plus the applicable reduction in overhead and profit. When both additions and credits are involved in any change, the combined overhead and profit shall be calculated on the basis of the net change, whether an increase or decrease. In any event, the minimum detail shall be an itemization of all man-hours required by discipline/trade with the unit cost per man-hour and total labor price, labor burden, equipment hours and rate for each piece of equipment, material by units of measure and price per unit, other costs specifically itemized, plus the overhead and profit markup.

7.5.7. If the Parties are unable to agree on a price for the changed Work, a reasonable price for the same shall be established by the County in accordance with this Article 7. The County shall then process a unilateral Change Order, specifying the said reasonable price, in accordance with Article 7. The Construction Manager shall perform the Work as directed in the Change Order but may submit a claim in accordance with this Article 7.

7.5.8. If the County elects to utilize Construction Manager to perform design and/or construction services beyond the Work specified in the Contract, then any Change Order for such services may include reasonable General Conditions and General Requirements subject to approval by the County.

7.6. Change of Contract Time.

7.6.1. The Contract Time may only be changed by a Change Order. Any and all requests for an extension in the Contract Time shall be made in writing and delivered to the Project Manager within ten (10) days of the occurrence first happening and resulting in the claim. Written supporting data will be submitted to the Project Manager within twenty (20) days after such occurrence unless the Project Manager allows additional time. All claims submitted by the Construction Manager for adjustments to the Contract Time

must set forth in detail the reasons for and causes of the delay; clearly demonstrate that the delay will impact the Critical Path; and indicate why the subject delay was beyond the Construction Manager's control or fault. Failure on the part of the Construction Manager to submit claims for contract time extensions in the form herein required and within the timeframes in this subsection shall constitute a waiver of any right to a contract time extension to which the Construction Manager might otherwise have been entitled.

7.6.2. No Damages for Delays. Except as otherwise may be expressly provided in this Contract, no claim for additional compensation or damages from any cause whatsoever, including those for which the County may be responsible, in whole or in part, or any claim other than for an extension of time shall be made or asserted against the County by Construction Manager by reason of any delays. The Construction Manager shall not be entitled to an increase in the Cost of Work or payment or compensation of any kind from the County for direct, indirect, consequential, impact or other costs, expenses or damages of any kind, including but not limited to increased costs for materials or costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever; provided, however, that this provision shall not preclude Construction Manager from recovering damages for hindrances or delays due solely to fraud, bad faith or active interference on the part of County or its employees or agents. Neither party shall be liable for loss or damages suffered as a result of any delay or failure in performance under the Contract or interruption of performance resulting directly or indirectly from acts of God, accidents, fire, explosions, earthquakes, floods, water, hurricanes, wind, lightning, civil or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, strikes, or labor disputes. Construction Manager shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such delays.

The above paragraph shall expressly apply to claims based on early completion, as well as claims based upon late completion. The Construction Manager shall not have the right to damages or additional compensation on the basis that delays for any cause whatsoever prevented early completion.

7.7. Liquidated Damages. If Construction Manager fails to achieve Substantial Completion set forth in the Work Schedule for the Construction Phase, Liquidated Damages shall be assessed in the amounts determined pursuant to Article 11. Upon Project Manager's notification to Construction Manager that Construction Manager failed to meet the Substantial Completion Date, the County may deduct the liquidated damages in the amounts stated in the Contract or any amendment thereto either by deductive Change Order or from any monies due the Construction Manager, in addition to any retainage being withheld. Failure of the Project Manager to notify the Construction Manager and to deduct the liquidated damages from a progress payment shall not be construed as a waiver of liquidated damages assessment.

ARTICLE 8.

WARRANTIES, GUARANTEES, AND REPRESENTATIONS

8.1. Representations and Warranties. Construction Manager represents and warrants to the County the following, which representations and warranties are a material inducement for the County entering into and executing this Contract:

8.2. Corporate or Joint Venture Status. Construction Manager warrants and represents to the County that it is and shall remain throughout the term of this Contract the same entity that submitted the Proposal in response to the RFP, and that this same entity will remain active and current throughout the period this Contract is in effect, which includes post-construction and warranty periods.

8.3. Licenses. Construction Manager agrees and covenants to maintain itself as the legal entity obligated under this Contract to perform and provide the services hereunder, and in good standing throughout the period this Contract is in effect, which includes post-construction and warranty periods. It further agrees to obtain and maintain in good standing throughout the period this Contract is in effect, all such licenses as are required to do business in the State of Florida, Charlotte County, and any other applicable jurisdiction, including, but not limited to, licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional engineering, architectural, surveying and construction services to be provided and performed by Construction Manager pursuant to this Contract.

8.4. General Warranty. Construction Manager shall warrant all new Work, and all labor, materials, services and equipment incorporated therein, for an initial minimum period of one year from the date of Substantial Completion or for such longer period(s) as may be reasonable or fair under the circumstances; agreed upon between County and Construction Manager; or may be otherwise provided in this Contract. However, this provision shall not terminate Construction Manager's liability which shall terminate under an applicable statute of limitations or establish a period of limitations with respect to the Work nor limit or abrogate any other rights or remedies of the County under this Contract or applicable law. Construction Manager warrants that all materials and equipment will be of good quality and new unless otherwise required or permitted by express written agreement between County and Construction Manager. Construction Manager further warrants that the Work will be free from defects not inherent in the quality required or permitted. Construction Manager additionally warrants that Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Construction Manager's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Construction Manager, improper or insufficient maintenance, or improper operation. If requested by County, Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment provided. Remedial work performed on existing conditions will not be covered by this general warranty.

8.5. Extended Warranties. Any available extended warranties associated with the new Work will be granted to the County by the Construction Manager.

ARTICLE 9.
OWNERSHIP AND USE OF DOCUMENTS

9.1. All documents, data, studies, surveys, analyses, sketches, tracings, specifications, plans, designs, design calculations, details, computations, drawings, maps, models, photographs, reports, and other documents and plans resulting from Consultant's services under this Agreement are the property of and shall be delivered to County upon request, and without cost, restriction, or limitation as to use, regardless of the format of the document (paper or electronic). However, any use subsequent to or other than for the specific project for which such items were created, shall be at sole risk of County.

9.2. Consultant agrees that any software, computer systems, and databases used for providing the documents necessary to this Agreement shall be compatible with existing County software and systems.

ARTICLE 10.
COUNTY'S RESPONSIBILITIES

10.1. County shall perform the responsibilities contained in this Article 10 in a timely manner so as not to delay the services of Construction Manager.

10.2. County shall furnish to Construction Manager, upon request of Construction Manager and at County expense, all existing studies, reports and other available data pertinent to the services to be performed under this Contract which are within the County's possession. However, Construction Manager shall be required to evaluate all materials furnished hereunder using reasonable professional judgment before relying on such materials.

10.3. The County Project Manager will provide direct contact and communication between the County and Construction Manager with respect to providing information, assistance, guidance, coordination, and review of the Construction Manager's Work pursuant to this Contract and any authorized Change Order(s). The Project Manager shall not be authorized to, and shall not, issue any verbal or written request or instruction or approval to Construction Manager that might have the effect, or that might be interpreted to have the effect, of modifying or changing this Contract in any respect.

10.4. County shall provide reasonable access and entry to all public property required by Construction Manager to perform the services described in this Agreement. All such access and entry shall be provided at County expense. County shall also use reasonable efforts to obtain permission for reasonable access and entry to any private property required by Construction Manager to perform the services described in this Agreement.

ARTICLE 11.
TERM / TERMINATION

11.1. The term of this Agreement shall begin on the Effective Date. All Phase I work shall be completed in accordance with the Project Schedule, **Section RP-22 – Proposed Project Budget and Schedule**, and **Exhibit A**. All Phase II services contained in the Scope of Services and required under this Agreement shall be completed in accordance with the Project Schedule as developed by the Construction Manager, after Construction Manager receives notice to proceed with Phase II and County accepts such services and products as satisfactory, unless otherwise terminated in accordance herewith.

11.2. The County shall have the right at any time upon thirty (30) calendar days written notice to the Construction Manager to terminate the services of the Construction Manager and, in that event, the Construction Manager shall cease work and shall deliver to the County, at no cost, all documents, (including reports, designs, specifications, and all other data) prepared or obtained by the Construction Manager in connection with its services. The County shall, upon receipt of the aforesaid documents, pay to the Construction Manager, and the Construction Manager shall accept as full payment for its services, fees for all tasks completed in accordance with Scopes of Services.

11.3. If the Construction Manager has abandoned performance under this Agreement, then the County may terminate this Agreement upon three (3) calendar day's written notice to the Construction Manager indicating its intention to terminate. The written notice shall state the evidence indicating the Construction Manager's abandonment. Payment for services performed prior to the Construction Manager's abandonment shall be as stated in this Contract.

11.4. Construction Manager's failure to complete the required Work by the Substantial Completion Milestone Dates shall entitle the County to deduct from the Cost of Work "Liquidated Damages" per calendar day delay of an amount established prior to commencement of Phase II by amendment.

ARTICLE 12.
NOTICES

12.1. Any notice required or permitted to be sent hereunder shall be sent certified mail, return receipt requested to the parties at the addresses listed below:

Construction Manager:
Jon F. Swift Inc.
Name: Ross Russo
Vice President
Address: 2221 8th Street
Sarasota, FL 34237

County:
Purchasing Division
Name: Kimberly Corbett
Sr. Division Manager
Address: 18500 Murdock Circle, Ste. 344
Port Charlotte, FL 33948

ARTICLE 13.
NO CONTINGENT FEES

13.1. CONSTRUCTION MANAGER certifies that it has not employed or retained any company or person, other than a bona fide employee working solely for Construction Manager to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Construction Manager any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, County shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 14.
TRUTH-IN-NEGOTIATION CERTIFICATE

14.1. In accordance with Section 287.055 Florida Statutes and Charlotte County Resolution 2003-059, signature of this Agreement by Construction Manager shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which County determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

ARTICLE 15.
ASSIGNMENT

15.1. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances by Construction Manager without the prior written consent of County. Further, no portion of this Agreement may be performed by subcontractors or subconsultants without written notice to and approval of such action by County.

ARTICLE 16.
EXTENT OF AGREEMENT / SEVERABILITY / MODIFICATION

16.1. This Agreement represents the entire and integrated agreement between the County and Construction Manager and supersedes all prior negotiations, representations or agreement, either written or oral.

16.2. In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One

or more waivers by either party of any breach of any provision, term, condition or covenant shall not be construed by the other party as a waiver of any subsequent breach.

16.3. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by both parties.

ARTICLE 17. **GOVERNING LAW / VENUE**

17.1. This Agreement shall be governed and construed in accordance with Florida law. In the event any court action or litigation arises between the parties in connection with this Agreement, venue for said court action or such litigation shall lie exclusively in or for Charlotte County, Florida.

ARTICLE 18. **INDEPENDENT CONTRACTOR STATUS**

18.1. Construction Manager as an Independent Contractor. Construction Manager and its Professionals, Subconsultants, and Subcontractors shall remain independent contractors and shall have no power to bind the County, nor shall any of them represent that they have any power to bind the County, or to assume or create any obligations, expressed or implied, on behalf of the County. Construction Manager, in providing and performing the Work required pursuant to this Contract, shall only represent County in the manner and to the extent specifically set forth in writing in this Contract and as provided in any written Change Order(s) issued hereunder. County neither assumes nor accepts any obligation, commitment, responsibility or liability which may result from any representation(s) by Construction Manager not specifically provided for and authorized as stated hereinabove. Construction Manager shall promote the best interests of the County with respect to any performance of the Work under this Contract.

18.2. County as Third-Party Beneficiary; Correlation and Intent of Documents. Nothing contained in this Contract or any or all of Construction Manager's Contracts with its Subcontractors or Professionals shall create a contractual relationship between the County and any third party. However, the parties understand and agree that the County is an intended third-party beneficiary of all of Construction Manager's Contracts and subcontracts for Design-Build services. Construction Manager shall require that all of its contracts with its Professionals and Subcontractors expressly provide for the County to be an intended third-party beneficiary of such contracts so as to enable County to maintain a cause of action directly against such Professionals and Subcontractors as necessary for any errors and omissions related to this Work. Construction Manager shall provide evidence of such contractual provisions to County upon request, and Construction Manager agrees not to modify such provisions.

18.2.1. Construction Manager shall incorporate all the applicable obligations of this Contract into all of its respective contracts, subcontracts, supply contracts, purchase orders and insurance policies.

18.2.2. The County shall not be responsible or liable for, or assume any obligations whatever for, any contract entered into between any Professional, Subconsultant, or Subcontractor and the Construction Manager, or any other Professional, Subconsultant or Subcontractor. The County shall not be responsible for any payments due and/or owing to any party other than Construction Manager as provided for in this Contract.

ARTICLE 19.

AUDIT REQUIREMENTS AND PUBLIC RECORDS

19.1. Construction Manager shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at Construction Manager's offices for the purpose of inspection, audit, and copying during normal business hours by the County, or any of its authorized representatives. Such records shall be retained for a minimum of three (3) years after completion of the services.

19.2. Pursuant to Section 119.0701 of the Florida Statutes, contractors acting on behalf of the County must comply with the public records laws, specifically: a) keep and maintain public records required by the County to perform the contracted services; b) upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or as otherwise provided by law; c) ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract; and d) upon completion of the contract, keep and maintain all public records required by the County to perform the service, and meet all applicable requirements for retaining public records.

IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO RETAIN AND PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT (941) 743-1441, E-MAIL TO RECORDS@CHARLOTTECOUNTYFL.GOV, 18500 MURDOCK CIRCLE, BLDG. B, SUITE 109, PORT CHARLOTTE, FLORIDA 33948.

ARTICLE 20.

INSURANCE REQUIREMENTS

20.1. Insurance Coverages Required. Insurance requirements shall be those set forth in RFP 2024000098, **RP-14 Insurance Requirements**. Construction Manager shall procure and maintain all insurances set forth in RP-14, in the amounts set forth therein, which shall remain in effect until all of its obligations have been discharged under this Contract, including any warranty period, and Construction Manager shall

contractually require the same of all of its subcontractors. All policies except for the Workers Compensation and Professional Liability policies shall contain endorsements naming the County, its officers, employees, agents and volunteers as additional insured with respect to liabilities arising out of the performance of services under this Contract. All other provisions of RP-14 apply.

ARTICLE 21. INDEMNIFICATION

21.1. Construction Manager shall indemnify, defend and hold harmless County, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Construction Manager and all persons employed or utilized by the Construction Manager in the performance of the Work and this Contract. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right to indemnify which would otherwise exist as to any party or person described in this Article.

ARTICLE 22. EMPLOYEE RESTRICTIONS

22.1. Charlotte County will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a [Section 274A of the Immigration and Nationality Act ("INA")]. The County shall consider employment by the Construction Manager of unauthorized aliens a violation of Section 274A of the INA. Such violation by the Construction Manager of the employment provisions contained in Section 274A of the INA shall be grounds for termination of this Agreement by the County.

22.1.2. Pursuant to Section 448.095 of the Florida Statutes, all persons or firms entering into contracts with Charlotte County are required to register with, and use, the E-Verify system of the U.S. Department of Homeland Security to electronically verify the employment eligibility of all newly hired employees. The County may terminate this Agreement for failure on the part of the Contractor to use E-Verify. Contract termination for failure to use E-Verify is not considered a breach of contract pursuant to S. 448.095(2)(c)3, *Fla. Stat.*

22.2. The Construction Manager shall incorporate the terms of paragraphs 22.1 and 22.1.2. into all contracts with any subconsultants or subcontractors.

ARTICLE 23 SCRUTINIZED VENDORS

23.1. Pursuant to Section 287.135(3)(b) of the Florida Statutes, Charlotte County may, at its sole option, terminate this Agreement if the Construction Manager is

found to have been placed on the *Scrutinized Companies that Boycott Israel List*, or is engaged in a boycott of Israel.

23.2. Pursuant to Section 287.135(3)(a)4 of the Florida Statutes, Charlotte County may, at its sole option, terminate this Agreement if the Construction Manager is found to have submitted a false certification, has been placed on the *Scrutinized Companies with Activities in Sudan List*, or the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*, or has been engaged in business operations in Cuba or Syria or a boycott of Israel.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date and year last written below.

JON F. SWIFT INC.

WITNESSES:

By: 

Print Name: Andrea Vargas Gaitan

Date: 10-28-24

By: 

Date: 10/28/24

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

ATTEST:

Roger D. Eaton, Clerk of the Circuit
Court and Ex-Officio Clerk of the
Board of County Commissioners

By: 
Deputy Clerk

By: 
William G. Truex, Chairman

Date: October 28, 2024

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: 
Janette S. Knowlton, County Attorney
LR24-0854

Exhibit List:

Exhibit A – William R. Gaines, Jr. Veterans Memorial Park & G.S. Herring Park – CMAR

EXHIBIT A

**PRECONSTRUCTION NARRATIVE
RFP #24-098
WILLIAM R. GAINES JR VETERANS MEMORIAL PARK
& GC HERRING PARK**

Preconstruction Phase

Kickoff Meeting:

- Jon F. Swift will lead the kickoff meeting, setting the project schedule and financial goals with the team and stakeholders.
- A Cost Model format will be established to guide how costs relate to design throughout the project.
- Jon F. Swift will monitor design documents to ensure alignment with the Cost Model, which becomes the project's Control Estimate.

Schematic Design:

- Based on design documents, Jon F. Swift will prepare an initial Cost Estimate reflecting project scope, narratives, and draft specifications.
- This estimate will detail architectural and structural quantities. Mechanical, electrical, and plumbing (MEP) disciplines will use parameter quantities, which will be refined as designs evolve.
- Collaborative team meetings will ensure a shared understanding of the project's intent and scope. Jon F. Swift may also participate in neighborhood and community meetings.
- Value engineering will begin to identify cost-saving alternatives.
- The Schematic Design Estimate will be finalized after site visits and program evaluation and then presented for team review and approval.

Design Development Phase

Design Development Cost Estimate:

- This estimate will be based on developed drawings and outlined specifications.
- It will include detailed quantities and allowances for undefined scopes, providing a more accurate budget picture.
- Costs per unit and square footage rates will be established, compared to the Cost Model and previous estimates. Deviations will be flagged for further evaluation.
- Jon F. Swift will continue monitoring document progress for compliance with the Cost Model and project goals.
- Value engineering will continue alongside estimate preparation.
- The project schedule and milestones will be refined to account for future industry trends.
- Costs will be benchmarked against Jon F. Swift's historical cost database, adjusted for inflation, market saturation, and local construction activity.

Construction Document Phase/Bidding

- The team will verify the schedule, constructability, and value engineering considerations from previous phases.
- All review comments will be incorporated into a final construction document set for bidding.

- Jon F. Swift will regularly engage with subcontractors regarding constructability to prevent construction delays.
- The team will agree on submittal procedures, and quality control measures, and finalize the project schedule and milestone report.
- Once the Construction Document estimate is finalized, bid packages will be issued, and the formal bidding process will begin.
- After analyzing bids, the team will recommend awards. Upon approval, the final GMP estimate will be submitted.
- The team will await notice to proceed with construction activities and procurement (buyout).

Community Outreach (Optional)

- If desired by the County, Jon F. Swift will assist with providing updates on construction activities, impacts, and progress.

Value Engineering and Constructability Review

Process:

- This ongoing process aims to reduce costs, expedite construction, and enhance project value through:
 - Meetings with clients, architects/engineers, and consultants
 - Establishing criteria for evaluating different design options
 - Regular project meetings to discuss ideas and suggestions
 - Consultation with specialty contractors and market trends
 - Extensive reporting and regular feedback

Jon F. Swift's Role:

- Throughout preconstruction and construction, Jon F. Swift will work with the team to:
 - Evaluate value engineering alternatives
 - Recommend options based on life cycle cost analysis (considering construction costs, operational impacts, energy costs, staffing, maintenance, and salvage value)
 - Continuously review designs for cost-effectiveness and alignment with project goals
 - Identify ways to improve quality, expedite schedules, and optimize costs

Additional Considerations:

- Value engineering becomes a refinement tool after the schematic phase as the project scope is established.
- Options will be tracked throughout construction to ensure budget and schedule adherence.

EXHIBIT A - ESTIMATE OVERVIEW/BUDGET

PRE-DESIGN / SCHEMATIC DESIGN PHASE		\$14,880.00
Pre-Design Kick-off Meeting	INC	
Site Visits / Utility Evaluation	INC	
Permit Evaluation	INC	
Program Scope Verification Mtgs	INC	
Develop Design Phase Schedule & Milestones	INC	
Identify Long Lead Items and Specialty Contractors	INC	
Quantity Take-off / Estimate	INC	
Constructability Reviews	INC	
Admin Support	INC	
Value Engineering	INC	
Issue SD Milestone Report / Review / Approve	INC	
DESIGN 60% & 90% DEVELOPMENT PHASE		\$22,600.00
Document SD review comments	INC	
Site Visits	INC	
Update Design and Project Schedule	INC	
Develop Bidders Prequalification Listing / Select Bidders	INC	
Update Long Lead Item List	INC	
Quantity Take-off / Estimate	INC	
Constructability Reviews	INC	
Update Budget from SD Review	INC	
Admin Support	INC	
Subcontractor Design Assist / Scope Reviews	INC	
Value Engineering	INC	
Issue DD Milestone Report / Review / Approve	INC	

EXHIBIT A - ESTIMATE OVERVIEW/BUDGET

CONSTRUCTION DOCS PHASE / BIDDING		\$22,320.00
Document DD Review Comments	INC	
Establish Submittal Procedures	INC	
Quality Control Implementation	INC	
Update Design and Project Schedule	INC	
Quantity Take-off / Estimate	INC	
Value Engineering	INC	
Issue CD Milestone Report / Review / Approve	INC	
Subcontractor Prequal & Bid Packages	INC	
Subcontractor scope reviews / mtgs	INC	
Admin Support	INC	
Update Budget from DD / CD Document Review	INC	
Finalize Subcontractor Bidding Documents	INC	
Finalize Scope Packages	INC	
Receive and analyze bids	INC	
Recommend Award of Contracts / Develop GMP Estimate	INC	
Review and Approve GMP	INC	
Copies, Reports & Reproduction	INC	
GLI per limits in RFP	INC	
TOTAL		\$59,800.00