

*PINELLAS COUNTY GOVERNMENT IS COMMITTED TO PROGRESSIVE PUBLIC POLICY,  
SUPERIOR PUBLIC SERVICE, COURTEOUS PUBLIC CONTACT, JUDICIOUS EXERCISE  
OF AUTHORITY AND SOUND MANAGEMENT OF PUBLIC RESOURCES, TO MEET THE  
NEEDS AND CONCERNS OF OUR CITIZENS TODAY AND TOMORROW*



## CONSTRUCTION MANAGEMENT AT RISK SERVICES

STATE ROAD 699 (GULF BOULEVARD) FROM PARK  
BOULEVARD TO WALSINGHAM ROAD  
ROADWAY AND UTILITIES IMPROVEMENTS

PBS&J CONSTRUCTORS, INC.

AGREEMENT PREPARED BY  
DEPARTMENT OF PUBLIC WORKS

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## **CONSTRUCTION MANAGEMENT AGREEMENT**

**THIS Agreement**, made and entered into by and between the Board of County Commissioners of Pinellas County, a political subdivision of the State of Florida, hereinafter designated the OWNER, and PBS&J CONSTRUCTORS, INC. (“Construction Manager”), a Florida Corporation, to perform all work (“Work”) in connection with the management and construction of that certain construction of SR 699 (Gulf Blvd) from Park Boulevard to Walsingham Road, Roadway and Utilities Improvement (Project”), located at Indian Rocks Beach and Indian Shores, Pinellas County, Florida, said Work being set forth in the plans and specifications being prepared by HDR Engineering, McKim & Creed, P.A., the Engineer of Record (“Design Professional”), and Keith and Schnars, P.A., and all other Contract Documents hereafter specified.

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

### **Section 1.**

### **Contract Documents**

The Contract Documents consist of this Agreement, the Exhibits described in Section 8 hereof, and any duly executed and issued addenda, Change Orders, Construction Change Directives, Field Orders and amendments relating thereto. Further, the term Contract Documents shall include all plans and specifications for the construction of the Project (“Construction Documents”) being prepared by Design Professional, but only after said Construction Documents have been completed by Design Professional and approved in writing by Owner. All of the foregoing Contract Documents are sometimes referred to herein as the “Contract”.

Owner shall furnish Construction Manager with one (1) sealed copy and one (1) reproducible set of the Construction Documents. Any additional copies of Construction Documents, required by Construction Manager for execution of the Work, shall be made by Construction Manager. The reproducible set of the Construction Documents shall be returned to Owner upon final acceptance of the Work or termination of the Contract, whichever occurs first. Provided, however, Owner is furnishing Construction Manager a reproducible set of Construction Documents for Construction Manager’s convenience and such furnishing by Owner shall not be deemed to be a waiver by Owner or Design Professional of any copyright, patent or license they may have with respect to the Construction Documents. All such copyrights, patents and licenses hereby being expressly reserved by Owner and Design Professional.

### **Section 2.**

### **Scope of Work**

The Work to be provided by Construction Manager pursuant to this Contract shall be performed essentially in two phases. Those phases are the Pre-Construction Phase Services and Construction Phase Services. At the discretion of Owner, those two phases may overlap.

**Pre-Construction Phase Services.** Construction Manager shall review and comment upon the Construction Documents developed by Design Professional. The scope of that review shall include, but not be limited to, reviewing those various documents for value engineering and constructability. During the Pre-Construction Phase, Construction Manager agrees to attend any and all design and preconstruction conferences and to otherwise assist and cooperate with Design Professional with respect to the design of the Project.

Construction Manager shall attend Utility Coordination meetings between Indian Shores and Florida Progress.

Construction Manager shall attend meetings between the Owner and the Florida Department of Transportation regarding Pre-Construction aspects of this Project.

Construction Manager shall assist the Owner with responding to inquiries from the FHWA regarding Pre-Construction aspects of this Project.

Construction Manager shall assist the Owner with responding to questions from the Florida Department of Transportation regarding Pre-Construction aspects of this Project.

When the Owner and Construction Manager agree that the design of the Project is sufficiently developed and documented to allow detailed pricing, Construction Manager shall develop, prepare and submit a Guaranteed Maximum Price Proposal to the Owner in accordance with Exhibit K. The Owner shall accept such Guaranteed Maximum Price within thirty days of the date of the receipt unless such time is mutually extended. If the Owner does not accept the GMP within the time period herein provided, such proposal shall be presumed to be rejected by the Owner and the Construction Manager shall be entitled to payment for all Pre-Construction Phase services in the amount indicated in Section 4, A of the Agreement.

Construction Manager shall provide all other services during the Pre-Construction Phase of the Project as set forth in Exhibit A, Article 8.

**Construction Phase Services.** After the Construction Documents have been sufficiently completed by Design Professional and approved by Owner for all of the Work (or such portions thereof as may be designated by Owner in writing), and Owner and Construction Manager have agreed in writing upon the Guaranteed Maximum Price to be paid Construction Manager and the Contract Time for the Work (or designated portions thereof) as hereafter provided, Construction Manager shall furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all of the terms and conditions of the Contract Documents.

### **Section 3.**

### **Relationship of Parties**

A. Construction Manager accepts the relationship of trust and confidence established by this Agreement. Construction Manager covenants with Owner to cooperate with Design

Professional; to utilize Construction Manager's best skill, efforts and judgment in furthering the interest of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and the most expeditious and economical manner, consistent with the interests of Owner, and Contract terms and conditions. Further, Construction Manager acknowledges that (i) it has represented to Owner that it has specific expertise in the planning, management and construction of projects of similar size, cost and complexity and (ii) that such representation is a material inducement to Owner to enter into this Contract.

B. Wherever the terms of this Contract refer to some action, consent, or approval (excluding approvals of Change Orders, Construction Change Directive or amendments to the Contract) to be provided by Owner or some notice, report or document is to be provided to Owner, such reference to "Owner" shall mean Owner, Owner's staff, or Owner's designee (to the extent such designee has been expressly authorized by Owner in writing; the Director of Utilities Engineering shall have the authority to make such written authorizations), unless otherwise stated herein.

C. Construction Manager hereby designates Raymond E. Simpson as its Project Manager, with full authority to bind and obligate Construction Manager on all matters arising out of or relating to the Work or the Contract Documents. Construction Manager agrees that the Project Manger shall devote whatever time is required to satisfactorily manage the Work and further agrees that the Project Manager shall not be removed or replaced by Construction Manager without Owner's prior approval, which approval shall not be unreasonably withheld.

D. The Construction Manager is excluded from having local hiring preferences

#### **Section 4.**

#### **Contract Amount**

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

A. **Pre-Construction Phase Services.** For all Pre-Construction Phase Services, enumerated in this Agreement and in Exhibit A, Article 8 Construction Manager shall receive compensation as follows:

- Lump Sum in the amount of Two Hundred and Seventy Five Thousand Dollars, \$275,000:
  - Invoices shall be submitted to the Owner for the percentage of the pre-construction services completed.

B. **Construction Phase.** With respect to the Construction Phase Services to be provided by Construction Manager hereunder, Owner shall:

- reimburse Construction Manager for the Cost of the Work (as that term is defined hereafter)
- pay the Construction Manager a Construction Manager's Fee to be negotiated for the completion of the Construction Phase services
- pay the Construction Manager a lump sum amount to be negotiated for the Cost of General Conditions at the site during the Construction Phase of the Project.

The Construction Manager's Fee shall be Construction Manager's total compensation for all overhead not reimbursable as Cost of the Work under Section 5.A. below, as well as Construction Manager's total profit for Construction Phase Services. Construction Manager agrees to provide Owner with a Guaranteed Maximum Price proposal for the total sum of the Construction Manager's Fee, plus the Cost of the Work (including General Conditions), plus the Construction Manager's Contingency within 60 calendar days after the Construction Documents in the opinion of the Owner and Construction Manager are sufficiently completed by Design Professional and approved in writing by Owner. The Guaranteed Maximum Price shall be based actual subcontractor cost proposals as negotiated with the various subcontractors. Further, the proposal shall be broken down into the categories and level of detail required by Owner. Construction Manager agrees that all of its books, records and files, with respect to its development of the guaranteed maximum price proposal, shall be open to Owner for review and copying. The final guaranteed maximum price shall be mutually agreed upon by Owner and Construction Manager and shall be set forth in the GMP Amendment ("GMP"). The form for GMP Amendment is attached hereto as Exhibit K. Construction Manager shall provide a detailed breakdown acceptable to Owner of its guaranteed maximum price proposal, as well as for the GMP. Construction Manager guarantees that in no event shall the sum of the Construction Manager's Fee, the total Cost of the Work (including General Conditions), and the Construction Manager's Contingency exceed the GMP, however, the GMP may be adjusted pursuant to the terms herein for Change Orders and Construction Change Directives. In the event Construction Manager and Owner fail to reach an agreement on the GMP, Owner may elect to terminate this Contract. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services; but Construction Manager shall not be entitled to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed

## **Section 5.        Cost of the Work**

A.        **Costs to be Reimbursed.** The term Cost of the Work shall mean all costs necessarily and reasonably incurred by Construction Manager in the proper performance of the Construction Phase Services portion of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of Owner only after Construction Manager has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. The Cost of the Work shall include only those items set forth below in this subsection A:

1. **General Conditions**

- a. Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project site or, with Owner's written agreement, at off-site workshops.
- b. Wages or salary of Construction Manager's supervisory, technical, and administrative personnel who are stationed at the Project site with Owner's written agreement.
- c. Wages and salaries of Construction Manager's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with Owner's written agreement.
- d. Wages and salaries of Construction Manager's supervisory, technical, and administrative personnel when assigned to this project and specifically working on this project in the Construction Manager's administrative or home offices.
- e. The parties hereby establish a Fringe Benefits rate of XXX% expressed as a percentage of Direct Salaries, provided such markup is to apply only upon those wages and salaries included in the Cost of the Work under subsections 5. A. 1. a through 5. A. 1. d, above.
- f. Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Manager.
- g. Rental charges, at standard industry rates for the area, for temporary facilities, machinery, vehicles, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site, whether rented from Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Construction Manager or others, shall be subject to Owner's prior written approval.



- h. Cost of removal and proper disposal of debris from the Project site.
- i. Costs of telegrams, long distance telephone calls, cellular telephone calls, Internet service, postage and parcel delivery charges and telephone service at the Project site and reasonable petty cash expenses of the Project site office.
- j. That portion of the reasonable travel and subsistence expenses of Construction Manager's personnel, assigned to the Project site, incurred while traveling outside of the Pinellas County area in discharge of duties connected with the Work, provided all of such expenses and charges shall be subject to the prior written approval of Owner.
- k. Temporary living and travel expenses of employees who are not relocated, but assigned to the Project.
- l. Cost of reproducing and printing.
- m. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Manager is liable.
- n. Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Manager is required by the Contract Documents to pay.
- o. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Contract.
- p. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.
- q. Deposits lost for causes other than Construction Manager's fault or negligence.
- r. Legal, mediation and arbitration costs, other than those arising from disputes between Owner and Construction Manager, reasonably incurred by Construction Manager in performance of the Work and with Owner's prior written consent,
- s. Costs reasonably incurred in repairing or correcting damage or nonconforming Work executed by Construction Manager, or its subcontractors or suppliers, provided that such damage or

nonconforming Work was not caused by the negligence of Construction Manager.

- t. Cost of Public Information Programs or other neighborhood functions hosted by Construction manager at the direction of Owner.
- u. Cost of Partnering.
- w. Cost of site safety as provided by Construction Manager
- x. Cost of documentation, inspection and testing as required for the preparation of the FDOT Final Estimate and implementation of the FDOT Contractor Quality Control process.
- y. Bonds and insurance premiums as required by Contract.
- z. Cost to protect the Work and adjacent property from loss and damage.

The General Conditions will be paid as a lump sum appropriately spread over the course of the work and as defined in the GMP Amendment.

2. **Subcontract and Material Costs.**

- a. Payments made by Construction Manager to subcontractors in accordance with the requirements of the applicable written subcontracts.
- b. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- c. Costs of materials described in subsection 5. A. 2. b, above, in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to Owner at the completion of the Work or, at Owner's option, shall be sold by Construction Manager; amounts realized, if any, from such sales, shall be credited to Owner as a deduction from the Costs of the Work.

All subcontractor costs will be documented by signed subcontractor invoices and all material costs will be documented by copies of invoices.

- B. Costs Not To Be Reimbursed.** The Cost of the Work shall not include the following items:

1. Except as provided in Section 5. A. 1. d. salaries and other compensation of Construction Manager's personnel stationed at Construction Manager's principal office or offices other than the Project site office.
2. Except as provided in the Fringe Benefits rate included in subsection 5. A. 1. e, expenses of Construction Manager's principal office and offices other than the Project site office.
3. Overhead and general expenses, except as may be expressly included in subsection 5. A. 1.
4. Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Work.
5. Rental costs of machinery and equipment, except as specifically provided in subsection 5. A. 1. g.
6. Except as expressly provided in subsection 5. A. 1. s, costs due to the negligence of Construction Manager, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
7. Any costs not specifically and expressly described in subsection A above.
8. Costs which would cause the GMP to be exceeded (as the GMP may be adjusted pursuant to the terms herein for Change Order and Construction Change Directive
9. Construction Manager is responsible, without reimbursement from Owner, for re-inspection fees and costs; to the extent such re-inspections are due to the negligence of Construction Manager.

C. **Discounts, Rebates and Refunds.**

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

2. Amounts which accrued to Owner in accordance with the provisions of subsection 5. C. 1, shall be credited to Owner as a deduction from the Cost of the Work.

**Section 6.**

**Bonds**

A. Within ten (10) business days after the GMP is agreed to by Owner and Construction Manager, Construction Manager shall provide Owner with Performance and Payment Bonds, in the form prescribed in Exhibits C and D, in the amount of 100% of the total sum of the GMP, the costs of which are to be paid by Construction Manager. The Performance and Payment Bonds must comply with the following provisions and must be otherwise acceptable to Owner:

1. The Bonds must be underwritten by a surety company which has a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The surety company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The surety company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The surety company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
5. The Bonds must be fully performable in Florida, with service and venue in Pinellas County, Florida.
6. If the GMP exceeds \$500,000.00, the surety company shall also comply with the following provisions:
  - a. The surety company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide:

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

- b. The surety company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
  - (1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.
  - (2) In the case of a surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any surety deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

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

C. In accordance with the requirements of Section 255.05(1)(a), Florida Statutes, Construction Manager shall record within 5 days in the Public Records of Pinellas County, Florida, a copy of the Performance and Payment Bonds. Construction Manager shall deliver within 10 days to Owner evidence, reasonably acceptable to Owner, of the recording of said Bonds. The delivery of such evidence is a condition precedent to Owner's obligation to make any progress payments to Construction Manager hereunder.

**Section 7.**

**Contract Time and Liquidated Damages**

A. Time is of the essence in the performance of the Work under this Contract. The "Pre-Construction Commencement Date" shall be established in a Notice to Proceed to be issued by Owner. Construction Manager shall commence the Pre-Construction Phase Services portion of the Work within five (5) calendar days after the Pre-Construction Phase Commencement Date. Any Work performed by Construction Manager prior to the Pre-Construction Phase Commencement Date shall be at the sole risk of Construction Manager. The "Construction Phase Commencement Date" shall be established in GMP Amendment. Construction Manager shall commence the Construction Phase Services portion of the Work within five (5) calendar days after the Construction Phase Commencement Date. No portion of the Work, with respect to the Construction Phase Services to be provided hereunder, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by Owner in writing. The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Substantial Completion of the Work is referred to hereafter as the "Contract Time". The Contract Time is set forth with more specificity in Paragraph B below.

B. Because the Work may be completed in two phases, the timely completion of the first phase is critical to the timely completion of the second phase and, therefore, completion of the entire Project. Accordingly, if applicable, Construction Manager agrees to provide the Pre-Construction Phase Services in accordance with the design schedule established pursuant to the terms of the Design Agreement. With respect to the Construction Phase Services, the GMP Amendment shall include the date that portion of the Work associated with the Construction Phase Services must be substantially completed by Construction Manager. That Substantial Completion date shall be established in terms of calendar days after the Construction Phase Commencement Date. In the event Construction Manager and Owner fail to reach an agreement on the Contract Time and the Substantial Completion date, Owner may elect to terminate this Contract. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned to the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance and in writing by Owner; but Construction Manager shall not be entitled to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed. Substantial Completion of the Work shall be achieved when the Work has been completed to the point where Owner can occupy or utilize the Work for its intended purpose. Design Professional shall certify the date Substantial Completion of the Work is achieved. If Owner has designated portions of the Work to be turned over to Owner prior to Substantial Completion of the entire Work, Design Professional shall certify the date as to when Substantial Completion of such designated portions of the Work have been achieved. The entire Work shall be fully completed and ready for final acceptance by Owner within 30 calendar days after the Substantial Completion date.

C. Owner and Construction Manager recognize that, since time is of the essence for this Contract, Owner will suffer financial loss if the Work associated with the Construction Phase is not substantially completed within the time specified in the GMP Amendment, as said time may be adjusted as provided for herein. In such event, the total amount of Owner's damages, will be difficult, if not impossible, to definitely ascertain and quantify, because this is a public construction project that will, when completed, benefit the public in Pinellas County, Florida. It is hereby agreed that it is appropriate and fair that Owner receive liquidated damages from Construction Manager, if Construction Manager fails to achieve Substantial Completion of the Work within the required Contract Time. Should Construction Manager fail to substantially complete the Work within the required time period, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, Two Thousand Dollars, \$2,000, for each calendar day thereafter until Substantial Completion is achieved. However, the maximum amount in Liquidated Damages the Construction Manager shall be liable for shall be an amount less than or equal the Construction Manager's Fee. Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of Owner's actual damages at the time of contracting if Construction Manager fails to substantially complete the Work in a timely manner.

D. When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period

falls on a Saturday or Sunday or on a day made a legal holiday by the laws of Florida, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday. The term “business day” as used herein shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by Owner.

## **Section 8.**

## **Exhibits Incorporated**

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

Exhibit A:	General Terms and Conditions
Exhibit B:	Supplemental Terms and Conditions
Exhibit C:	Form of Payment Bond
Exhibit D:	Form of Performance Bond
Exhibit E:	Insurance Requirements
Exhibit F:	Form of Release and Affidavit
Exhibit G:	Form of Construction Manager Application for Payment
Exhibit H:	Form of Change Order
Exhibit I:	Master Project Schedule Milestones
Exhibit J:	Construction Manager’s Staffing Schedule
Exhibit K:	GMP Amendment to Agreement between Owner and Construction Manager
Exhibit L:	Truth-In-Negotiation Certificate
Exhibit M:	Certificate of Insurance Form
Exhibit N:	Local Agency Agreement
Exhibit O:	Federal Requirements, LAP Checklist for Construction Contracts
Exhibit P:	Federal Requirements, LAP Checklist for Administrative Operations
Exhibit Q:	FHWA 1273
Exhibit R:	Davis-Bacon Wage Table
Exhibit S:	SEP-14 Document

In case of inconsistency ambiguity or discrepancy, between Contract Documents, the Exhibits shall govern over the Construction Management Agreement.

In case of inconsistency, ambiguity or discrepancy, between the FDOT Standard Specifications and the Contract Documents, the Contract Documents shall govern.

## **Section 9.**

## **Notices**

A. All notices required or made pursuant to this Contract by Construction Manager to Owner shall be in writing and may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, (iii) by hand delivery to the appropriate address as herein provided, or (iv) by telecopy

with confirmation copy to be mailed. Notices required hereunder shall be directed to the following address:

Pinellas County Utilities Department  
14 South Fort Harrison  
Clearwater, FL 33756  
ATTENTION:Michael Sweet, PE, DEE, Director of Utilities Engineering  
Fax No.: (727) 464-3595

All notices required or made pursuant to this Contract by Owner to Construction Manager shall be made in writing and may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, (iii) by hand delivery to the appropriate address as herein provided, or (iv) by telecopy with confirmation copy to be mailed. Notices required hereunder shall be directed to the following address:

PBS&J Constructors, Inc.  
5300 West Cypress Street, Suite 200  
Tampa, FL 33607  
ATTENTION:Raymond E. Simpson  
Fax No. 813-282-1421

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

**Section 10.**

**Modification**

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

**Section 11.**

**Successors and Assigns**

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

**Section 12.**

**Governing Law**

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

**Section 13.**

**No Waiver**

The failure of Owner to enforce at any time or for any period of time any one or more of the provisions of the Contract shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.



**Section 14.**

**Entire Agreement**

Each of the parties hereto agrees and represents that the Contract comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Contract.

**Section 15.**

**Severability**

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

**Section 16.**

**Construction**

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

**IN WITNESS WHEREOF**, the parties have caused this instrument to be executed on the day and year as written.

**OWNER:**

**CONSTRUCTION MANAGER:**

**OWNER:**

PINELLAS COUNTY acting by and through  
its Board of County Commissioners

By: \_\_\_\_\_  
Chairman

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Ken Burke  
Clerk of the Circuit Court

By: \_\_\_\_\_  
Deputy Clerk

Reviewed and Approved Subject To Proper  
Execution:

By: \_\_\_\_\_  
Office of County Attorney

Approved as to Form:

By: \_\_\_\_\_  
Office of County Attorney

**CONSTRUCTION MANAGER:**

PBS&J Constructors, Inc.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESSES:  
\_\_\_\_\_

Print Name: \_\_\_\_\_

Business Address: \_\_\_\_\_  
\_\_\_\_\_

Print Name: \_\_\_\_\_

Business Address: \_\_\_\_\_  
\_\_\_\_\_

## **EXHIBIT A**

### **GENERAL TERMS AND CONDITIONS**

#### **1. INTENT OF CONTRACT DOCUMENTS.**

1.1 It is the intent of the Contract Documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for in the Contract Documents. If the Contract Documents include words or terms that have a generally accepted technical or industry meaning, then such words or terms shall be interpreted to have such standard meaning unless otherwise expressly noted in the Contract Documents. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in affect at the time the Work is performed, except as may be otherwise specifically stated herein. Provided, however, in the event the standard specification, manual, code, law or regulation is changed after the GMP Amendment has been executed by the parties, Construction Manager shall be entitled to a Change Order equitably adjusting the Contract Amount and/or Contract Time to the extent such change materially impacts the Contract Time and/or Contract Amount.

1.2 If during the performance of the Work Construction Manager discovers a conflict, error or discrepancy in the Contract Documents, Construction Manager immediately shall report same to Design Professional in writing, and before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from Design Professional. Prior to commencing each portion of the Work, Construction Manager shall first take all necessary field measurements and verify the applicable field conditions. After taking such measurements and verifying such conditions, Construction Manager shall carefully compare such measurements and conditions with the requirements of the Contract Documents, taking into consideration all other relevant information known to Construction Manager, for the purpose of identifying and bringing to Owner's attention all conflicts or discrepancies with the Contract Documents.

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

## 2. INVESTIGATION AND UTILITIES.

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

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

2.3 If during the performance of the Work, Construction Manager or any subcontractor, sub-subcontractor, agent, employee or anyone else for whom Construction Manager is legally liable, causes a disruption to any Utilities service to other facilities or customers within the Project area, Construction Manager shall take all actions necessary and required to immediately restore such Utilities service. If Construction Manager fails to take such immediate actions Owner shall have the right to take whatever actions it deems necessary and required to immediately restore the disrupted services, and all costs incurred by Owner as a result thereof shall be reimbursed to Owner by Construction Manager within five (5) business days of written demand for same from Owner.

## 3. SCHEDULE.

3.1 The Construction Manager shall prepare and provide the various schedules set forth in Exhibit B to the Agreement.

3.2 The Project Schedule shall be updated by Construction Manager as often as is specified in Exhibit B, paragraph B, 3.1.1 to the Agreement. The Master Project Schedule and all updates to it shall be subject to Owner's and Design Professional's review and comment.

#### 4. **PROGRESS PAYMENTS.**

4.1 Construction Manager's monthly Applications for Payment shall be in such form and contain such detail and backup as Owner reasonably may require. Such detail and backup shall include documentation of actual payments made.

4.2 At the time it submits its GMP proposal to Owner, Construction Manager also shall submit to Owner and Design Professional, for their review, a Schedule of Values based upon the GMP proposal. The Schedule of Values will be based on the major items of work. The Schedule of Values will be structured so that the costs of the major items of work can be allocated to the various elements of work. The Schedule of Values will be attached to the GMP Amendment and shall be used as the basis for Construction Manager's monthly Applications for Payment thereafter. The Schedule of Values shall be updated for the current month Change Orders and Construction Change Directives and submitted each month to Design Professional along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit G.

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

4.4 Construction Manager shall submit four (4) notarized original copies of its monthly Application for Payment to Owner, or Design Professional as directed by the Owner, on a monthly basis. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Within seven (7) calendar days after receipt of each Application for Payment, Design Professional shall submit to Owner a Certificate for Payment in the amount recommended by Design Professional as being due and owing Construction Manager. Owner shall pay Construction Manager that portion of Design Professional's Certificate for Payment which Owner approves as being due and owing Construction Manager within thirty (30) calendar days of Owner's approval of same.

4.5 Retainage will not be withheld until the percent of allowable Contract Time used exceeds 75%. From that time forward, the Owner may withhold retainage of 10% of the amount due on the current pay estimate as retainage when the percent of allowable Contract time used exceeds the percent of Contract amount earned by more than 15%. Contract amount is defined as the original GMP adjusted by approved Change Orders. Contract time is defined as the original Contract time adjusted by approved Change Orders.

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

4.7 Each Application for Payment shall be accompanied by a Release and Affidavit, in the form attached to the Agreement as Exhibit F, showing that all materials, labor, equipment and other bills associated with that portion of the Work payment is being requested on have been paid in full through the previous month's Application for Payment. Owner shall not be required to make payment until and unless these affidavits are furnished by Construction Manager. Further, if Construction Manager is withholding any portion of a payment to any subcontractor for any labor, services, or materials for which Owner has paid Construction Manager, Construction Manager agrees to refund such money to Owner.

## **5. PAYMENTS WITHHELD.**

5.1 Design Professional shall review each Application for Payment submitted by Construction Manager and shall make recommendations to Owner as to the proper amounts, if any, which may be owed Construction Manager under the Application for Payment. Design Professional's payment recommendation shall be evidenced by a Certificate for Payment issued by Design Professional to Owner. All Certificates for Payment are subject to Owner's review and approval. Both Design Professional and Owner shall have the right to refuse to certify or approve for payment any amounts, or portions thereof, requested by Construction Manager in an Application for Payment, or rescind any amount previously certified and approved in a Certificate for Payment, and Owner may withhold any payments otherwise due Construction Manager under this Contract, to the extent it is reasonably necessary, to protect Owner from any expense, cost or loss attributable to: (a) defective or deficient Work not properly remedied in accordance with the terms of the Contract Documents; (b) the filing or reasonable evidence indicating the probable filing of third party claims against Owner attributable to the negligence of Construction Manager; (c) Construction Manager's failure to make timely and proper payments to all subcontractors and suppliers; (d) reasonable evidence that the remaining Work cannot be completed for the unpaid Contract Amount balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract Time; (f) Construction Manager's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (g) any other material breach of the requirements of the Contract Documents by Construction Manager. Owner shall have the right, but not the obligation, to take any corrective action Owner deems appropriate to cure any of the above noted items, at Construction Manager's expense, if Construction Manager has not started with a cure, to the Owner's reasonable satisfaction, of any of the above noted items within five (5) working days after Construction Manager's receipt of written notice from Owner

## **6. FINAL PAYMENT.**

6.1 Owner shall make final payment to Construction Manager in accordance with the Florida Prompt Payment Act, provided the Work is finally accepted by Owner in accordance with Paragraph 23.2 herein, and provided that Construction Manager first, and as an explicit condition precedent to the accrual of Construction Manager's right to final payment, shall have furnished Owner with a properly executed and notarized final release (conditioned only upon receipt of final payment) in the form of the Release and Affidavit attached to the Agreement as Exhibit F, as well as, a duly executed copy of the surety's consent to final payment and such other documentation that may be required by the Contract Documents or Owner.

6.2 Construction Manager's acceptance of final payment shall constitute a full waiver of any and all claims by Construction Manager against Owner arising out of this Contract or otherwise relating to the Project, except those identified in writing by Construction Manager as unsettled in the final Application for Payment. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to enforce any obligations of Construction Manager hereunder or to the recovery of damages for defective Work not discovered by Owner or Design Professional at the time of final inspection.

6.3 The Contract will be considered complete when all Work has been completed and accepted by the Board of County Commissioners. The Construction Manager will then be released from further obligation except as set forth in paragraph 24, Warranty.

## **7. SUBMITTALS AND SUBSTITUTIONS.**

7.1 Construction Manager shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Construction Manager shall submit all such materials in such form and manner as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof. The Construction Manager shall also carefully review and certify for accuracy and completeness all shop drawings and other submittals and then forward the same to the Design Professional for review and action. Within fourteen (14) days, the Design Professional will transmit them back to the Construction Manager who will then issue the submittals to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote the expeditious handling of shop drawings and all other submittals. The Construction Manager shall request the Design Professional to make interpretations of the drawings or specifications requested of it by the subcontractors. The Construction Manager shall advise the Design Professional in writing which submittals or requests for clarification have the greatest urgency; the purpose being to enable the Design Professional to prioritize requests coming from the Construction Manager. The Construction Manager shall advise the Owner and Design Professional in writing when timely response is not occurring on any of the above.

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

7.3 If Construction Manager wishes to furnish or use a substitute item of material or equipment, Construction Manager shall make application to Design Professional for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions

and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Construction Manager's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Design Professional in evaluating the proposed substitute. Design Professional may require Construction Manager to furnish at Construction Manager's expense additional data about the proposed substitute.

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

7.5 Design Professional shall be allowed a reasonable time within which to evaluate each proposed substitute. Design Professional and Owner shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without Owner's and Design Professional's prior written acceptance which shall be evidenced by either a Change Order or an approved submittal. Owner may require Construction Manager to furnish at Construction Manager's expense a special performance guarantee or other surety with respect to any substitute. The cost of such guarantee would be reimbursable from the Construction Manager's Contingency funds, provided that this cost is presented with the proposed substitute. If Owner rejects the proposed substitute, at Owner's discretion, Owner may require Construction Manager to reimburse Owner for the charges of Design Professional and Design Professional's consultants for evaluating the proposed substitute.

## 8. PRE-CONSTRUCTION PHASE SERVICES.

As applicable, Construction Manager shall provide the following review and commentary services, in addition to any other Pre-Construction Phase Services required by the terms of this Agreement:

8.1 **Review, Recommendations and Warranty:** The Construction Manager shall familiarize itself thoroughly with the roadway, drainage, utility, traffic signals, pavement markings, maintenance of traffic, and seawall plans and specifications. If applicable, the



Construction Manager shall make recommendations with respect to the selection of systems and materials, and cost-reducing alternatives including assistance to the Design Professional and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall address the benefits of the speed of erection and early completion of the Work. The Construction Manager shall furnish pertinent information as to the availability of materials and labor that will be required. The Construction Manager shall submit to the Owner and Design Professional such comments as may be appropriate concerning construction feasibility and practicality. The Construction Manager shall call to the Owner's and the Design Professional's attention any defects in the design, drawings and specifications or other documents of which it is aware. The Construction Manager shall prepare estimates of the construction cost utilizing the unit quantity survey method in the FDOT format.

8.2 **Intergovernmental Coordination:** The Construction Manager shall become familiar with the Federal Highway Administration (FHWA), SEP-14 process and assist the Owner with the SEP-14 as necessary. The Construction Manager shall assist the Owner as necessary with the Florida Department of Transportation, Local Agency Program (LAP) checklist.

8.3 **Review Reports:** If applicable, within twenty one (21) days after receiving the documents produced by the Design Professional, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph 8.1 above and on factors set out in Paragraphs 8.4 and 8.5 below. Within the same twenty one (21) day period, the Construction Manager shall submit to the Owner, with copies to the Design Professional, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as the Construction Manager may deem appropriate, and all actions taken by the Design Professional with respect to same, any comments the Construction Manager may deem to be appropriate with respect to separating the Work into separate subcontracts, alternative materials, and any other appropriate or required comments.

AT THE TIME THE GMP IS MUTUALLY ESTABLISHED, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED IN AMENDMENT NO. 1, THE CONSTRUCTION MANAGER SHALL BE DEEMED TO HAVE WARRANTED TO OWNER, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE CONSTRUCTION DOCUMENTS ARE CONSISTENT WITH EACH OTHER, PRACTICAL, FEASIBLE AND CONSTRUCTABLE. FURTHER, THE CONSTRUCTION MANAGER SHALL BE DEEMED TO HAVE WARRANTED TO OWNER THAT THE WORK DESCRIBED IN THE CONSTRUCTION DOCUMENTS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTABLE WITHIN THE CONTRACT TIME.

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

Manager shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items, and advise Owner and Design Professional of any problems or possible delays in delivery.

## 8.5 **Interfacing**

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

8.5.2 Without assuming any design responsibilities of the Design Professional, the Construction Manager shall include in the reports required under Paragraph 8.2 above, comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Design Professional may arrange for necessary corrections.

## 9. **CONSTRUCTION PHASE SERVICES.**

Construction Manager shall provide the following services in addition to any other Construction Phase Services required by the terms of this Contract:

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

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

9.1.2 For all such job-site facilities purchased, which may become the property of the Owner at the conclusion of the Work, the Construction Manager shall maintain ownership responsibilities of such facilities until final acceptance of the Work.

9.1.3 The Construction Manager is responsible for proper care and maintenance of all equipment while in its control.

9.2 The Construction Manager's administration of the Work shall include the following:

- 9.2.1 Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
- 9.2.2 Maintain a roster of companies on the Project with names and telephone numbers of key personnel.
- 9.2.3 Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
- 9.2.4 Provide labor relations management for a harmonious, productive Project.

9.3 The Construction Manager also shall provide job site administration functions during construction to assure proper documentation, including but not limited to the following:

9.3.1 Job Meetings:

- 9.3.1.1 Conduct a preconstruction conference with each subcontractor after award of the subcontract and prior to the start of its portion of the Work. Hold weekly progress and coordination meetings, or more frequently if required by Work progress, to provide for the timely completion of the Work. In addition, Construction Manager shall arrange and conduct regular monthly Project status meetings with the Design Professional and Owner.
- 9.3.1.2 Construction Manager shall use the job site meetings as a tool for the preplanning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand. During these meetings, Construction Manager shall identify the party or parties responsible for following up on any problems, delay items or questions, and Construction Manager shall note the action to be taken by such party or parties. Construction Manager shall revisit each pending item at each subsequent meeting until resolution is achieved. Construction Manager shall attempt to obtain from all present any problems or delaying event known to them for appropriate attention and resolution.

- 9.3.2 Shop Drawing Submittals: Provide staff to coordinate the review and processing of shop drawings and substitution request supplied by the subcontractor with the Design Professional. Maintain a complete log of all submittal of shop drawings, noting the dates of first submittal and subsequent reviews, re-submittals, and approvals. The Design Professional will review and approve shop drawings and substitution request for substantial conformance with the design concept of the project.
- 9.3.3 Material and Equipment Expediting: Provide staff to closely monitor material and equipment deliveries, check and follow-up on supplier commitments for all subcontractors and maintain a material and equipment expediting log.
- 9.3.4 Payments to Subcontractors: Develop and implement a procedure for the review, processing and payment of applications by subcontractors for progress and final payments.
- 9.3.5 Document Interpretation: Refer all questions for interpretation of the Contract Documents to the Design Professional in writing.
- 9.3.6 Reports and Project Site Documents: Record the progress of the Work. Submit written progress reports to the Owner and the Design Professional, including information on subcontractors' Work, and the percentage of completion. Keep a daily log available to the Owner, the Design Professional, and any permitting authority inspectors.
- 9.3.7 Subcontractors Progress: Prepare periodic punch lists for subcontractors' work including unsatisfactory or incomplete items and schedules for their completion.
- 9.3.8 Substantial Completion: Pursuant to the provisions of Paragraph 23.1 of these General Terms and Conditions, ascertain when the Work or designated portions thereof are ready for the Design Professional's Substantial Completion inspections. From the punch lists of incomplete or unsatisfactory items prepared by Construction Manager and reviewed and supplemented by Design Professional, prepare a schedule for their completion indicating completion dates for the Owner's review.
- 9.3.9 Final Completion: Monitor the subcontractors' performance on the completion of the Work and provide notice to the Owner and Design Professional when the Work is ready for final inspection. Secure, review and certify compliance with the Contract Documents, then transmit to the Owner, through the Design

Professional, all required guarantees, warranties, affidavits, releases, bonds, waivers, manuals, record drawings, and maintenance books.

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

9.3.11 Record Drawings: Pursuant to the terms of Paragraph 10.2 hereafter, the Construction Manager shall monitor the progress of its own forces and its subcontractors on marked up field prints which shall be developed by Construction Manager into the final record drawings.

9.4 The Construction Manager shall maintain at the Project site, originals or copies of, on a current basis, all Project files and records, including, but not limited to, the following administrative records:

- 9.4.1 Subcontracts and Purchase Orders
- 9.4.2 Subcontractor Licenses
- 9.4.3 Shop Drawing Submittal/Approval Logs
- 9.4.4 Equipment Purchase/Delivery Logs
- 9.4.5 Contract Drawings and Specifications with Addenda
- 9.4.6 Warranties and Guarantees
- 9.4.7 Cost Accounting Records
- 9.4.8 Labor Costs
- 9.4.9 Material Costs
- 9.4.10 Equipment Costs
- 9.4.11 Cost Proposal Request
- 9.4.12 Payment Request Records
- 9.4.13 Meeting Minutes
- 9.4.14 Cost-Estimates
- 9.4.15 Bulletin Quotations
- 9.4.16 Lab Test Reports
- 9.4.17 Insurance Certificates and Bonds
- 9.4.18 Contract Changes
- 9.4.19 Permits
- 9.4.20 Material Purchase Delivery Logs
- 9.4.21 Technical Standards
- 9.4.22 Design Handbooks
- 9.4.23 "As-Built" Marked Prints
- 9.4.24 Operating & Maintenance Instruction
- 9.4.25 Daily Progress Reports
- 9.4.26 Monthly Progress Reports
- 9.4.27 Correspondence Files
- 9.4.28 Transmittal Records

- 9.4.29 Inspection Reports
- 9.4.30 Subcontractor Selection Information
- 9.4.31 Subcontractor Negotiations
- 9.4.32 Punch Lists
- 9.4.33 PMIS Schedule and Updates
- 9.4.34 Suspense (Tickler) Files of Outstanding Requirements
- 9.4.35 Policy and Procedure Manual

The Project files and records shall be available at all times to the Owner and Design Professional or their designees for reference, review or copying.

9.5 The Construction Manager shall provide the following services with respect to the Work, to facilitate the smooth, successful and timely occupancy of the Project by Owner:

9.5.1 The Construction Manager shall provide consultation and project management to facilitate Owner's occupancy of the Project and provide transitional services to place the Work "on line" in such conditions as will satisfy Owner's operations requirements. The services include the Construction Manager's coordination of the delivery of Owner supplied furniture, fixtures and equipment for the Project.

9.5.2 The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The Construction Manager shall provide Owner's operations and maintenance personnel with operations and maintenance training with respect to the equipment and systems being provided as part of the Work. This training may be video taped by Owner for subsequent presentation to Owner's operations and maintenance personnel.

9.5.3 The Construction Manager shall secure required guarantees and warranties, and shall assemble and deliver same to the Owner in the manner required by Owner.

9.5.4 The Construction Manager shall provide all services in accordance with the FDOT's Contractor Quality Control Program.

9.5.5 The Construction Manager shall provide all testing, inspection, measurement, and documentation required to provide an FDOT Final Estimate.

## **10. DAILY REPORTS, RECORD CONTRACT DOCUMENTS AND MEETINGS.**

10.1 Construction Manager shall prepare, maintain and submit to Design Professional and Owner, for their review and approval, the various logs, reports, and schedules set forth in Exhibit B to the Agreement. The Construction Manager's complete performance of its obligation to prepare, maintain and submit those logs, reports, and schedules is a condition precedent to Owner's obligation hereunder to make payments of the Construction Manager's Fee

to Construction Manager. These logs, reports and schedules shall not constitute nor take the place of any notice required to be given by Construction Manager to Owner or Design Professional pursuant to the Contract Documents.

10.2 Construction Manager shall maintain in a safe place at the Project site one record copy and one permit set of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Construction Change Directive and Field Orders, as well as all written interpretations and clarifications issued by Design Professional, in good order and annotated to show all changes made during construction. The record Contract Documents shall be updated by Construction Manager throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Construction Change Directive and Field Orders, and all concealed and buried installations of piping, conduit and utility services. Construction Manager shall certify the accuracy of the updated record Contract Documents. As a condition precedent to Owner's obligation to pay the Construction Manager's Fee, Construction Manager shall provide evidence, satisfactory to Owner and Design Professional, that Construction Manager is fulfilling its obligation to update the record Contract Documents. All buried and concealed items, within the Project site, shall be accurately located on the record Contract Documents as to depth and in relationship to not less than two (2) permanent features. The record Contract Documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The record Contract Documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to Owner and Design Professional for reference. Upon completion of the Work and as a condition precedent to Construction Manager's entitlement to final payment, the record Contract Documents, samples and shop drawings shall be delivered to Design Professional by Construction Manager for Owner.

10.3 Construction Manager shall advise Owner, its representatives and Design Professional of their requested or required participation in any meeting or inspection giving each at least one week written notice unless such notice is made impossible by conditions beyond Construction Manager's fault and control, in which case at least 48 hours prior written notice must be given.

## 11. CONTRACT TIME AND TIME EXTENSIONS.

11.1 Construction Manager shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and materialmen, as well as coordinating its Work with all work of others at the Project site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Construction Manager or anyone for whom Construction Manager is liable. Unless expressly noted otherwise in the Contract Documents, Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, and the coordination of Owner's suppliers and contractors as set forth in Section 14 herein.

11.2 Should Construction Manager be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Construction Manager, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes, lockouts, utility work being performed within the project limits by local government agencies in conjunction with Florida Progress, Brighthouse Cable or Verizon Telephone, or by, unusually severe weather conditions by comparison with the ten-year Pinellas County, Florida, average not reasonably anticipatable, Construction Manager shall notify Owner and Design Professional in writing within seven (7) calendar days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Construction Manager may have had to request a time extension.

11.3 If Construction Manager encounters on the Project site any materials reasonably believed by Construction Manager to be petroleum or petroleum related products or other hazardous or toxic substances which have not been rendered harmless, Construction Manager immediately shall (i) stop Work in the area affected and (ii) report the condition to Owner in writing. If the Work is so stopped and hazardous material is found, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include, but not be limited to, an adjustment to the Contract Time as appropriate. If no hazardous material is found after the Work is stopped, no Change Order is required to resume the Work in the affected area. Further, if the hazardous material was generated or caused by the Construction Manager or any of its employees, agents, subcontractors, or material suppliers, no Change Order will be required for an adjustment in the Contract Time and Construction Manager shall indemnify the Owner and hold Owner harmless for any costs incurred by the Owner with respect to such hazardous material.

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



For Delay” provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of Owner or anyone for whom the Owner is liable, (including the undergrounding of the Progress Energy utilities throughout the project in the event the Construction Manager does not enter into an agreement directly with Progress Energy) and such delays have a cumulative total of more than twenty-one (21) calendar days, Construction Manager may make a claim for its actual and direct delay damages accruing after said twenty-one (21) calendar days. In no event shall Owner be liable to Construction Manager whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, special, indirect, incidental, or consequential damages of any kind or nature whatsoever.

## 12. CHANGES IN THE WORK.

12.1 Owner shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, but in no event more than fourteen (14) days after its receipt of such notification (unless Owner has agreed in writing to a longer period of time), Construction Manager shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or for minor changes ordered by the Design Professional, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to Construction Manager for any increased compensation or adjustment to the Contract Time without such written order. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally.

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

12.3 If Owner and Construction Manager are unable to agree on a Change Order for the requested change, Construction Manager shall, nevertheless, promptly perform the change as directed by Owner in a written Construction Change Directive. In that event, the Contract Amount and Contract Time shall be adjusted as directed by Owner. If Construction Manager disagrees with Owner’s adjustment determination, Construction Manager must make a claim pursuant to Section 13 of these General Conditions or else be deemed to have waived any claim it might otherwise have had on that matter.

12.4 In the event a requested change is approved by Owner which results in either an increase or decrease to the Contract Amount, a Change Order shall be issued which increases or decreases the GMP by the amount of Construction Manager’s actual and reasonable direct Cost of the Work. The Construction Manager shall be entitled to receive an increase in the

compensation for General Conditions and additional Contract Time when the Scope of Work is increased or extended in accordance with the Change Order process. The Construction Manager's compensation for General Conditions and Contract Time shall be reduced when the Scope of Work is decreased in accordance with the Change Order process. The Construction Manager shall provide written documentation justifying a change in compensation and time to the Owner within thirty (30) days of the occurrence of the event, giving rise to such request.

12.5 Owner shall have the right to conduct an audit of Construction Manager's books and records, as well as those of its subcontractors and suppliers, to verify the accuracy of Construction Manager's claim with respect to Construction Manager's costs associated with any Change Order or Construction Change Directive.

12.6 With the concurrence of the Owner, Design Professional may direct Construction Manager to make nonmaterial changes to the Work, so long as such changes do not require or result in any adjustment to the Contract Amount, Contract Time or Project quality, and are generally within the scope of the Work. All such changes must be evidenced by a written order from Design Professional to Construction Manager, with a copy to Owner. Construction Manager shall comply with all such orders.

### **13. CLAIMS AND DISPUTES.**

13.1 The term "Claim" as used herein shall mean any and all demands made by one party hereunder against the other party, whether such demand be for money, time or the assertion of any right or obligation that arises out of the Contract Documents.

13.2 Initial notice of Claims by Construction Manager shall be made in writing to Owner within seven (7) calendar days after the first day of the event giving rise to such Claim or else Construction Manager shall be deemed to have waived the Claim. Written supporting data shall be submitted to Owner within thirty (30) calendar days after the occurrence of the event, unless Owner grants additional time in writing, or else Construction Manager shall be deemed to have waived the Claim. All Claims shall be priced in accordance with the provisions of Paragraph 12.4 hereof.

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

13.4 Prior to the initiation of any action or proceeding permitted by this Contract to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power. Failing resolution, and prior to the commencement of depositions in any litigation between the parties with respect to the Project, the parties shall attempt to resolve the dispute through mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may request a court of law to order mediation under Florida Statutes Section 44.102.

13.5 Any litigation between the Owner and Construction Manager (which term for the purposes of this subparagraph shall include the Construction Manager's surety), whether arising out of any Claim or arising out of the Contract or any breach thereof, shall be brought, maintained and pursued only in the appropriate State courts of the State of Florida; and the Owner and the Construction Manager each hereby waive and renounce any and all rights and options which they, or either of them, have or might have to bring or maintain any such litigation or action in the Federal Court system of the United States or in any United States Federal District Court. Venue of any such litigation between the Owner and Construction Manager shall lie and be only in the appropriate State courts of the State of Florida's Sixth Judicial Circuit in and for Pinellas County, Florida. Construction Manager consents and submits to the jurisdiction of any such court and agrees to accept service of process from the State of Florida in any matter to be submitted to any such court.

#### 14. **OTHER WORK.**

14.1 Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Construction Manager prior to starting any such other work. If Construction Manager believes that such performance will involve additional expense to Construction Manager or require additional time, Construction Manager shall send written notice of that fact to Owner and Design Professional within seven (7) calendar days of being notified of the other work. If Construction Manager fails to send the above required seven (7) calendar days' notice, Construction Manager will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Amount.

14.2 Construction Manager shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Construction Manager shall be responsible for all damage to the work of others caused by the performance of its Work. Further, Construction Manager shall not in any way cut or alter the work of others without first receiving the written consent of that other person and Design Professional.

14.3 If any part of Construction Manager's Work depends for proper execution or results upon the work of any other contractor or utility owner (or Owner), Construction Manager shall inspect and promptly report to the Owner in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Such report must be made within seven (7) calendar days of the time Construction Manager first became aware of the delay, defect or deficiency or by the scheduled commencement of Construction Manager's dependent Work, whichever occurs first. Construction Manager's failure to report within the allotted time will constitute an acceptance of the other work as fit and proper for integration with Construction Manager's Work.

## 15. INSURANCE.

15.1 During the term of this Agreement Construction Manager shall provide, pay for, and maintain, with companies satisfactory to Owner, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida. Simultaneously with the execution and delivery of this Agreement by Construction Manager, Construction Manager has delivered to Owner properly executed Certificates of Insurance (on the modified ACCORD form attached as Exhibit M to the Agreement) evidencing the fact that Construction Manager has acquired and put in place the insurance coverages and limits required hereunder. In addition, certified, true and exact copies of all insurance policies required may be reviewed by the Owner, on a timely basis, if requested by Owner. These Certificates and policies shall contain provisions that thirty (30) calendar days written notice shall be given Owner of any cancellation, intent not to renew, or reduction in the policies' coverages, except in the application of the Aggregate Limits Provisions. Construction Manager shall also notify Owner, in a like manner, within two (2) calendar days after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by Construction Manager from its insurer, and nothing contained herein shall relieve Construction Manager of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy to be provided by it hereunder, Construction Manager shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. All insurance coverages of Construction Manager shall be primary to any insurance or self-insurance program carried by Owner.

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

15.2.1 The term "County Commissioners of Pinellas County Florida" shall include the Board of County Commissioners of Pinellas County, a political subdivision of the State of Florida and all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and offices thereof and individual members and employees thereof in their official capacity, and/or while acting on behalf of Pinellas County.

15.2.2 All insurance policies, other than the Professional Liability policy and the Workers Compensation policy, provided by Construction Manager to meet the requirements of this Agreement shall name The County Commissioners of Pinellas County, Florida, as that name is defined in subparagraph 15.2.1, above, as an additional insured as to the operations of Construction Manager under the Contract Documents and shall contain a severability of interests provisions.

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

15.2.4 All insurance coverages of Construction Manager shall be primary to any insurance or self-insurance program carried by Owner applicable to this Agreement, and the "Other Insurance" provisions of any policies obtained by Construction

Manager shall not apply to any insurance or self-insurance program carried by Owner applicable to this Agreement, provided Owner has modified their coverage on an excess basis.

15.2.5 The Certificates of Insurance, which are to be provided pursuant to paragraph 15.1 above, must identify this Contract and be on the form attached as Exhibit M.

15.2.6 All insurance policies shall be fully performable in Pinellas County, Florida, and shall be construed in accordance with the laws of the State of Florida.

15.2.7 All insurance policies to be provided by Construction Manager pursuant to the terms hereof must expressly state that the insurance company will accept service of process in Pinellas County, Florida and that the exclusive venue for any action concerning any matter under those policies shall be in the appropriate state court situated in Pinellas County, Florida.

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

15.4 Before starting and until completion of all Services required hereunder, Construction Manager shall procure and maintain insurance of the types and to the limits specified in Exhibit E, "Insurance Coverage," which is attached hereto and made a part hereof. Construction Manager shall require each of its subconsultants and subcontractors to procure and maintain, until the completion of that subconsultant's or subcontractor's work or services, insurance of the types and to the limits specified in Exhibit E, unless such insurance requirement for the subconsultant or subcontractor is expressly waived in writing by Owner.

15.5 If any insurance provided pursuant to this Agreement expires prior to the completion of the Services required hereunder, renewal Certificates of Insurance and, if requested by Owner, certified, true copies of the renewal policies, may be viewed by Owner thirty (30) calendar days prior to the date of expiration.

15.6 Should at any time Construction Manager not maintain the insurance coverages required in this Agreement, Owner may, with thirty (30) days written notice, cancel the Agreement and any Work Authorizations issued pursuant to the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge Construction Manager for such coverages purchased. If Construction Manager fails to reimburse Owner for such costs within thirty (30) calendar days after demand, Owner has the right to offset these costs from any amount due Construction Manager under this Agreement. Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Owner to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

15.7 All insurance companies from whom Construction Manager obtains the insurance policies required hereunder must meet the following minimum requirements:

15.7.1 The insurance company must be duly licensed and authorized by the Department of Insurance of the State of Florida to transact the appropriate insurance business in the State of Florida.

15.7.2 The insurance company must have been in such insurance business continuously for not less than five (5) years immediately prior to the date of execution of this Agreement.

15.7.3 The insurance company must have an A. M. Best policyholder rating of either “A+”, “A”, or “A-”.

15.7.4 The insurance company must have a current A. M. Best financial rating of “Class VI” or higher.

15.8 Builder’s Risk Insurance, on all risk completed value form, shall be provided by the Construction manager on the Project in an amount to be approved by owner not to exceed the Contract Agreement, with the Owner, Construction Manager and Design Professional as named insures and including the interest of the subcontractors and sub-subcontractors as their interest may appear. The owner, at its discretion, may require that the perils of earthquake, sinkhole and flood be added to the builder’s Risk policy. If added, the amounts of coverage may be less than the Contract Agreement. Any deductibles under the Builder’s Risk policy shall be the sole responsible of the Construction manager and shall be adjusted with the Owner with the cooperation of the Construction Manager with the claim check made payable to the Owner for its own interest and the interest of the Construction manager and all other insured parties. Subrogation rights of the insurance company against the Owner, Construction manager, and all subcontractors and sub-subcontractors, and any other parties may be insured under the Builder’s Risk coverage, shall be waived by the insurance company. In the event of a loss covered by the Builder’s Risk policy, the GMP shall be increased by the amount of the policy payment, unless the Owner retains a third party to rebuild the damaged work.

## **16. WAIVER OF SUBROGATION.**

16.1 Owner and Construction Manager waive all rights of subrogation against each other, Design Professional, , and the board members, directors, officers, agents, employees, subconsultants and subcontractors of any of them, for damages or injuries caused by perils covered by any insurance maintained by a party hereunder, except Workers Compensation and Professional Liability to the extent such damages or injuries are covered by such insurance, except no party hereto waives any rights they may have to the proceeds of such insurance held by another party. Construction Manager shall require similar waivers from all its subcontractors.

16.2 If any policies of insurance referred to in this Section require an endorsement to provide any waiver of subrogation referenced above, the owners of such policies will cause them to be so endorsed.

## **17. INDEMNIFICATION.**

17.1 Construction Manager shall defend, indemnify and hold harmless Owner and its officers and employees from any and all liabilities, claims, damages, penalties, demands, judgments, actions, proceedings, losses or costs, including, but not limited to, reasonable attorneys' fees, whether resulting from any claimed breach of this Agreement by Construction Manager or from personal injury, property damage, direct or consequential damages, or economic loss, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Construction Manager or anyone employed or utilized by the Construction Manager in the performance of this Agreement.

17.2 The duty to defend under this Article 17 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Construction Manager, Owner and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Construction Manager. Construction Manager's obligation to indemnify and defend under this Article 17 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the Owner or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

17.3 In the event the Construction Manager is determined not to be liable for any claims, damages, losses or costs, the Construction Manager shall be entitled to reimbursement from the Owner, for the costs associated with the duty to defend.

## **18. CLEANUP AND PROTECTIONS.**

18.1 Construction Manager agrees to keep the Project site clean at all times of debris, rubbish and waste materials arising out of the Work. If Construction Manager fails to keep the Project site clean, Owner has the right, after providing a twenty-four (24) hour written notice, to perform any required clean up and to backcharge the Construction Manager for the costs of such clean up. At the completion of the Work, Construction Manager shall remove all debris, rubbish and waste materials from and about the Project site, as well as all tools, appliances, construction equipment and machinery and surface materials, and shall leave the Project site clean and ready for occupancy by Owner.

18.2 Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Construction Manager from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Construction Manager to condition at least equal to that existing at the time of Construction Manager's commencement of the Work.

## **19. ASSIGNMENT.**

19.1 Construction Manager shall not assign this Contract or any part thereof, without the prior consent in writing of Owner. If Construction Manager does, with approval, assign this Contract or any part thereof, it shall require that its assignee be bound to it and to

assume toward Construction Manager all of the obligations and responsibilities that Construction Manager has assumed toward Owner.

## **20. PERMITS, LICENSES AND TAXES.**

20.1 All permits and licenses necessary for the prosecution of the Work shall be procured and paid for by Construction Manager. Permits and licenses to be acquired by Construction Manager with the assistance of Design Professional include, but are not limited to, building, site, and utility permits, as well as all Health Department and environmental permits required for the construction or relocation of Pinellas County water and/or sanitary sewer lines and facilities, to the extent such water and/or sewer work is included in this Contract. If Construction Manager performs any Work without obtaining, or contrary to, such permits or licenses, Construction Manager shall bear all costs arising therefrom. All costs incurred by Construction Manager with respect to performing its obligations under this Paragraph 20.1 shall be considered a direct cost item and shall be considered reimbursable as Cost of the Work as provided for in the Agreement. The Owner shall fully cooperate with the Construction Manager where necessary.

20.2 Construction Manager shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work. Additionally, Construction Manager shall comply with and fully implement the sales tax savings program with respect to the Work.

## **21. TERMINATION FOR DEFAULT.**

21.1 Construction Manager shall be considered in material default of the Contract and such default shall be considered cause for Owner to terminate the Contract, in whole or in part, as further set forth in this Article, if Construction Manager: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by Owner or Design Professional or as provided for in the approved Master Project Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work contrary to the requirements of the Contract; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) fails to promptly pay its subcontractors and suppliers; or (11) materially breaches any other provision of the Contract Documents.

21.2 If Owner determines that Construction Manager is in default under this Contract, Owner shall notify Construction Manager in writing of Construction Manager's default(s). If Owner determines that Construction Manager has not begun cure of the default(s) within five (5) working days following receipt by Construction Manager of said written notice, then Owner, at its option, without releasing or waiving its rights and remedies against



Construction Manager's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Construction Manager's right to proceed under the Contract, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Construction Manager, take assignments of any of Construction Manager's subcontracts and purchase orders that Owner may designate, and complete all or any portion of Construction Manager's Work by whatever means, method or agency which Owner, in its sole discretion, may choose. In making either the initial determination that Construction Manager is in default under this Contract or the subsequent determination that Construction Manager has failed to satisfactorily cure its default, Owner may rely solely upon the Design Professional's certification to Owner that in the Design Professional's opinion the Construction Manager is in default or has failed to satisfactorily cure its default.

21.3 If Owner deems any of the foregoing remedies necessary, Construction Manager agrees that it shall not be entitled to receive any further payments hereunder until after the Work is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Design Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the unpaid balance of the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Construction Manager agrees to pay promptly to Owner on demand the full amount of such excess, including costs of collection, attorney's fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by Owner to complete the Work, Construction Manager shall not be entitled to any portion of such excess, except for the unpaid portion of the Construction Manager's Fee earned and the Cost of Work incurred prior to Construction Manager's right to continue performance under this Contract being terminated. Any amounts to be paid to Owner by Construction Manager pursuant to this Paragraph 21.3 shall be certified by Design Professional, upon application, and this obligation for payment shall survive termination of the Contract.

21.4 The liability of Construction Manager hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by Owner in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder. Further, in the event Owner has exercised its right to terminate due to Construction Manager's default, Construction Manager shall be prohibited from bidding or otherwise seeking additional work from Owner in accordance with Owner's then current debarment policy.

21.5 If, after notice of termination of Construction Manager's right to proceed pursuant to this Article, it is determined for any reason that Construction Manager was not in default, or that its default was excusable, or that Owner is not entitled to the remedies against Construction Manager provided herein, then such termination shall be deemed a termination for

Owner's convenience and Construction Manager's remedies against Owner shall be the same as and limited to those afforded Construction Manager under Paragraph 22.1 below. However, the prohibition from bidding or otherwise seeking additional work from the Owner in Section 21.4 above shall not be applicable in the event a Termination for Cause is converted to a Termination for Convenience.

## **22. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION.**

22.1 Owner shall have the right to terminate this Contract without cause upon seven (7) calendar days written notice to Construction Manager. In the event of such termination for convenience, Construction Manager's recovery against Owner shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Construction Manager shall not be entitled to any other or further recovery against Owner, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

22.2 Owner shall have the right to suspend all or any portions of the Work upon giving Construction Manager seven (7) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Construction Manager shall be entitled to reasonable costs, expenses and time extension associated with the suspension. If the ordered suspension exceeds ninety (90) calendar days, Construction Manager shall have the right to terminate the Contract with respect to that portion of the Work which is subject to the ordered suspension.

## **23. COMPLETION.**

23.1 When the entire Work (or any portion thereof designated in writing by Owner) is ready for its intended use, Construction Manager shall notify Owner and Design Professional in writing that the entire Work (or such designated portion) is substantially complete and request that Design Professional issue a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion). Said written notice from Construction Manager shall include a proposed punchlist of all items of Work to be completed or corrected by Construction Manager. Within a reasonable time thereafter, Owner, Construction Manager and Design Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner and Design Professional do not consider the Work (or designated portion) substantially complete, Design Professional shall notify Construction Manager in writing giving the reasons therefore. In such case, Construction Manager shall pay the costs of all additional Substantial Completion inspections. If Owner and Design Professional consider the Work (or designated portion) substantially complete, Design Professional shall prepare and deliver to Construction Manager a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by Construction Manager and include a final punchlist of items to be completed or corrected by Construction Manager before final payment. Failure to include an item on the final punchlist does not waive Owner's right to demand completion of the item pursuant to the Contract Documents prior to or after final payment. Notwithstanding the foregoing, Owner and Design Professional will use their best

efforts to develop an initial complete and accurate punchlist. Owner shall have the right to exclude Construction Manager from the Work and Project site (or designated portion thereof) after the date of Substantial Completion (or Partial Substantial Completion), but Owner shall allow Construction Manager reasonable access to complete or correct items on the final punchlist.

23.2 When Construction Manager believes it has fully performed all of the Work, including all punchlist items, Construction Manager shall deliver to Owner a written affidavit from Construction Manager certifying that all Work has been completed in accordance with the requirements of the Contract Documents. That written affidavit shall be delivered to Owner by Construction Manager at the same time it submits its final Application for Payment. After receipt of such affidavit, the final Application for Payment and all other documents required for Project close-out, Design Professional and Owner shall promptly inspect the Work to determine if all of the Work has been completed and is ready for final acceptance by Owner. If Owner and Design Professional determine Construction Manager has completed the entire Work, Design Professional shall promptly issue a final Certificate for Payment, stating that, to the best of its knowledge, information and belief, and on the basis of its observations and inspections: (i) all of the Work has been completed in accordance with the requirements of the Contract Documents; (ii) the final balance due Construction Manager, as noted in the final Certificate for Payment, is due and payable; and (iii) all conditions precedent to Construction Manager's entitlement to final payment have been satisfied. Neither the final payment nor any retainage shall become due and payable until Construction Manager submits: (1) the final Release and Affidavit in the form attached to the Agreement as Exhibit F, (2) consent of surety to final payment, and (3) if required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner. Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Design Professional may have issued its recommendations. Until the Construction Manager completes all of its contractual obligations, with the exception of the Warranty period, neither the final payment nor any retainage shall become due and payable.

## 24. WARRANTY

24.1 Construction Manager shall obtain and assign to Owner all express warranties given to Construction Manager by any subcontractors or by any materialmen supplying materials, equipment or fixtures to be incorporated into the Project. Construction Manager expressly warrants to Owner that all materials and equipment to be incorporated into the Work shall be new unless otherwise specified. Further, Construction Manager expressly warrants to Owner that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Construction Manager further warrants to Owner that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. Further, any special warranty to be provided will be in such form as is acceptable to Owner and shall not include any exclusions, exceptions or modifications except to the extent approved by Owner in its sole discretion. In addition to all other rights and

remedies available to Owner at law or in equity, including any implied warranties Owner may be entitled to as a matter of law, Construction Manager expressly warrants to Owner that it shall promptly correct, upon receipt of written notice from Owner, any portion of the Work which is found to be defective or otherwise not in conformance with the requirements of the Contract Documents. In the event that any defective or non-conforming work is deemed by Owner in its sole discretion to present an immediate threat to safety or security, Owner shall be entitled to correct and fix such defective or non-conforming portions of the Work, and Construction Manager shall reimburse Owner for all costs and expenses incurred by Owner in performing such Work. This obligation to correct defective or nonconforming Work shall run for a period of one year (or such longer period of time as may otherwise be specified in the Contract Documents) commencing from the date Substantial Completion is achieved. With respect to the correction of any defective or nonconforming Work, Construction Manager shall be liable for all damage to any part of the Work itself and to any adjacent property which is caused by such corrective work. Contingency Funds may be utilized to correct such damage provided that damage was not caused by gross negligence on the part of the Construction Manager. Construction Manager shall conduct, jointly with Owner and Design Professional, a warranty inspection at six (6) months and eleven (11) months after the date Substantial Completion is achieved. Construction Manager's warranty excludes remedy for damage or defect caused by Owner's abuse, modifications not performed by Construction Manager, improper or insufficient maintenance by Owner (unless such maintenance was performed in accordance with the directions from Construction Manager), improper operation by Owner (unless such operations were performed in accordance with the directions from Construction Manager), or normal wear and tear under normal usage.

24.2 The Owner reserves the right, if it discovers an error in the partial or final estimates, or if it discovers that the Construction Manager performed defective work or used defective materials, after the final payment has been made, to claim and recover from the Contractor or his surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the work and materials. Construction manager shall retain all records pertaining to the project for a period of three years from the date of the Owner's final acceptance of the project. Upon request, Construction Manager shall make all such records available to the Owner or its representative. For the purpose of this Article, records include all books of account, supporting documents, and papers that the Owner deems necessary to ensure compliance with the Contract provisions.

## **25. TESTS AND INSPECTIONS.**

25.1 Owner, Design Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection and testing. Construction Manager shall provide proper, safe conditions for such access. Construction Manager shall provide Design Professional with timely prior written notice (at least 48 hours) of the readiness of the Work for all required inspections, tests or approvals.

25.2 If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested or approved, Construction Manager shall assume full responsibility therefore, pay all costs in connection therewith and furnish Design Professional the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to Owner and Design Professional. Cost of these inspections shall be included in Cost of Work.

25.3 If any Work that is to be inspected, tested or approved pursuant to the Contract Documents is covered without such inspection, testing or approval having been satisfactorily obtained by Construction Manager and without obtaining the written concurrence from Owner or Design Professional, such Work must, if requested by Owner or Design Professional, be uncovered for observation. Such uncovering shall be at Construction Manager's expense unless Construction Manager has given Owner or Design Professional 48 hours written notice of Construction Manager's intention to cover the same and has requested written concurrence by Owner or Design Professional and Owner or Design Professional has not acted with reasonable promptness to respond to such notice and request. If any Work is covered contrary to written directions from Owner or Design Professional, such Work must, if requested by Owner or Design Professional, be uncovered for Owner or Design Professional's observation and be replaced at Construction Manager's sole expense.

25.4 Owner shall charge to Construction Manager and may deduct from any payments due Construction Manager all engineering and inspection expenses incurred by Owner in connection with any overtime work unless such overtime work was expressly requested by the Construction Manager. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday or holidays, and Owner and Construction Manager recognize that time is of the essence for this Contract, therefore substantial overtime work is anticipated on this project.

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

25.6 Construction Manager is responsible, without reimbursement from Owner, for re-inspection fees and costs; to the extent such re-inspections are due to negligence of Construction Manager.

## **26. DEFECTIVE WORK**

26.1 Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. If required by Owner or Design Professional, Construction Manager shall as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the defective Work has been rejected by Owner or Design Professional, remove it from the site and replace it with non-defective Work. In the event the Work is deemed defective, for any reason other than the negligence of the Construction Manager, or its

subcontractors; than the Construction Manager shall be entitled to use the Contingency to remove the Work and replace it with non-defective Work.

26.2 If Owner or Design Professional consider it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others, Construction Manager, at Design Professional's or Owner's request, shall uncover, expose or otherwise make available for observation, inspection or tests as Owner or Design Professional may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Construction Manager shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Construction Manager shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

26.3 Owner shall have the right to order Construction Manager to stop all or any portion of the Work if at any time Owner reasonably determines that Construction Manager's performance of the Work is not in compliance with the requirements of the Contract Documents. Such noncompliance shall include, but is not limited to, Construction Manager's failure to provide adequate labor, materials or equipment to satisfactorily maintain the various Project schedules. This right to stop the Work shall be exercised, if at all, solely for Owner's benefit and nothing herein shall be construed as obligating Owner to exercise this right for the benefit of Construction Manager or any other person.

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

26.5 If Construction Manager fails, within a reasonable time after the written notice from Owner or Design Professional, to correct defective Work or to remove and replace rejected defective Work as required by Owner or Design Professional, or if Construction Manager fails to perform the Work in accordance with the Contract Documents, or if Construction Manager fails to comply with any of the provisions of the Contract Documents, Owner may, after seven (7) days' written notice to Construction Manager, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, Owner may exclude Construction Manager from any or all of the Project site, take possession of all or any part of the Work, and suspend Construction Manager's services related thereto, take possession of Construction Manager's tools, appliances, construction equipment and machinery

at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner has paid Construction Manager but which are stored elsewhere. Construction Manager shall allow Owner, Design Professional and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable Owner to exercise the rights and remedies under this Paragraph. All direct, indirect and consequential costs of Owner (up to a cumulative maximum amount less than or equal to the Construction Manager's Fee) in exercising such rights and remedies shall be charged against Construction Manager, and a Change Order or a Construction Change Directive shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Construction Manager's defective Work. Construction Manager shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

26.6 Nothing in Section 26, Defective Work, shall limit the Owner's access to the Construction Manager's Bond or Insurance.

**27. SUPERVISION AND CONSTRUCTION MANAGER'S REPRESENTATIVE.**

27.1 Construction Manager is responsible for supervising, coordinating and performing the Work with such care and skill as would be provided by a contractor with extensive and special expertise in the type of work required under the Contract Documents. Construction Manager is responsible for completing the Work so that it complies accurately and completely with the requirements of the Contract Documents. Construction Manager shall keep on the Work at all times during its progress a competent resident representative who shall not be replaced without prior written notice to Owner and Design Professional except under extraordinary circumstances. The representative shall have authority to act on behalf of Construction Manager. All communications given to the representative shall be as binding as if given to Construction Manager. Owner shall have the right to direct Construction Manager to remove and replace its Project representative or any other employee of Construction Manager or any employee of any subcontractor from this Project, with or without cause.

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

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

27.4 The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to the Construction Manager. The Construction Manager shall develop and maintain a program, acceptable to the Owner and Design Professional, to assure quality control of the Work. The Construction Manager shall supervise the Work of all subcontractors, providing instructions to each when their portion of the Work does not conform to the requirements of the Contract Documents and Construction Manager shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should a disagreement occur between the Construction Manager and the Design Professional over the acceptability of the Work, the Owner, in its sole discretion, shall have the right to determine the acceptability.

27.5 The Construction Manager shall not employ on this Project any person who has been convicted of a felony or misdemeanor-level criminal charge regarding sexual abuse or misconduct, nor permit any subcontractor to assign any employee of it to this Project who has been convicted of a felony or misdemeanor-level criminal charge regarding sexual abuse or misconduct.

## **28. PROTECTION OF WORK.**

28.1 Construction Manager shall fully protect the Work and adjacent property from loss or damage caused by the Construction Manager or its subcontractors until Substantial Completion is achieved. If Construction Manager or anyone for whom Construction Manager is legally liable is responsible for any loss or damage to the Work, or other work or materials of Owner or Owner's separate contractors, Construction Manager shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Construction Manager.

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

28.3 Construction Manager shall not permit any unsafe loading of any structure at the Project site, nor shall Construction Manager subject any part of the Work or adjacent property to any forces that will endanger it.



28.4 Construction Manager shall not disturb any benchmark established by Owner with respect to the Project. If Construction Manager, or its subcontractors, agents or anyone for whom Construction Manager is legally liable, disturbs Owner's benchmarks, Construction Manager shall immediately notify Owner and Design Professional. Owner shall have the benchmarks reestablished and Construction Manager shall be liable for all costs incurred by Owner associated therewith.

**29. EMERGENCIES.**

29.1 Construction Manager shall take immediate action to prevent injury to any person or damage to any property (including the Work and any adjacent property) which otherwise might arise from an emergency event at the Project site. If conditions are such that it is safe to return to the project site, Construction Manager shall give Design Professional written notice within forty-eight (48) hours after the occurrence of the emergency, if Construction Manager believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Design Professional determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Construction Manager fails to provide the forty-eight (48) hour written notice noted above, Construction Manager shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time. Construction Manager is obligated to promptly report in writing to Owner all accidents relating to the Work that result in any personal injury or property damage.

**30. USE OF PREMISES.**

30.1 At all times during the performance of the Work, Construction Manager shall keep all of its operations, (including, but not limited to, the use and storage of all equipment and materials), within the Project site or such other areas as may be permitted by the Contract Documents. Construction Manager shall not use the Project site in any manner that is unreasonably burdensome or otherwise inconsistent with Owner's interest. Construction Manager is responsible for any damage to any such area, or to the owner or occupant thereof, or any areas contiguous thereto, resulting from the performance of the Work.

30.2 Except as required by the Contract Documents or otherwise required in order for Construction Manager to satisfy its safety and security obligations under the Contract Documents, Construction Manager shall not erect or install, nor shall it permit any of its subcontractors, suppliers, subconsultants or any other party for whom it is legally responsible to erect or install, any signage upon the Project site or any other property of Owner, unless such signage has been expressly approved in writing by Owner, which approval may be withheld by Owner in its sole discretion.

30.3 Construction Manager acknowledges that Work may be performed at a particular Project site where Owner simultaneously is conducting and continuing its operations upon the same site. In such event, Construction Manager shall coordinate its Work so as to cause no unreasonable interference with or disruption to Owner's operations.

30.4 Owner may take early occupancy of all or any portions of the Work, at Owner's election, by designating in writing to Construction Manager the specific portions of the Work to be occupied and the date such occupancy shall commence. If any such specific early occupancy was not expressly identified at the time the GMP was established and such early occupancy negatively impacts Construction Manager's cost or time of performance, Construction Manager shall be entitled to an equitable adjustment to the Contract Amount and the Contract Time, all in accordance with the other terms and conditions of the Contract Documents.

## 31. SAFETY.

31.1 Construction Manager is responsible for the safety and protection of all persons and property on or about the Project site during the progress of the Work. Further, it is Construction Manager's responsibility to protect from damage or loss all material and equipment to be incorporated into the Work which may be stored off the Project site. Construction Manager shall develop and implement, in accordance with the requirements of the Contract Documents (including any Owner requirements or regulations), a safety plan for the Work.

31.2 Construction Manager shall comply with all applicable codes, laws, ordinances, rules and regulations of Owner and any public body having jurisdiction over the Work, including all of their safety codes, laws, ordinances, rules and regulations. Construction Manager shall notify owners of adjacent property and of any underground structures or improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Construction Manager's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by Owner has occurred.

31.3 At all times during the performance of the Work at the Project site, Construction Manager shall have designated, and located on a full time basis at the Project site, a qualified individual whose responsibility shall be to monitor and enforce Construction Manager's safety program at the Project site. Construction Manager hereby designates its superintendent as that safety representative. Construction Manager may designate by written notice to Owner another individual, reasonably acceptable to Owner, who shall be Construction Manager's safety representative at the Project site.

31.4 Alcohol, drugs and all illegal substances are strictly prohibited on any Owner property. All employees of Construction Manager, as well as those of all subcontractors and those of any other person or entity for whom Construction Manager is legally liable (collectively referred to herein as "Employees"), shall not possess or be under the influence of any such substances while on any Owner property. Further, Employees shall not bring on to any Owner property any gun, rifle or other firearm, or explosives of any kind.

31.5 Construction Manager acknowledges that the Work may be progressing on a Project site which is located upon or adjacent to an existing Owner facility. In such event, Construction Manager shall comply with the following:

31.5.1 All Owner facilities are smoke free. Smoking is strictly prohibited;

31.5.2 All Employees shall be provided an identification badge by Construction Manager. Such identification badge must be prominently displayed on the outside of the Employees' clothing at all times. All Employees working at the Project site must log in and out with the Construction Manager each day;

31.5.3 Construction Manager shall strictly limit its operations to the designated work areas and shall not permit any Employees to enter any other portions of Owner's property without Owner's expressed prior written consent;

31.5.4 All Employees are prohibited from distributing any papers or other materials upon Owner's property, and are strictly prohibited from using any of Owner's telephones or other office equipment;

31.5.5 All Employees shall at all times comply with the OSHA regulations with respect to dress and conduct at the Project site. Further, all Employees shall comply with the dress, conduct and facility regulations issued by Owner's officials onsite, as said regulations may be changed from time to time;

31.5.6 All Employees shall enter and leave Owner's facilities only through the ingress and egress points identified in the site utilization plan approved by Owner or as otherwise designated, from time to time, by Owner in writing;

31.5.7 When requested, Construction Manager shall cooperate with any ongoing Owner investigation involving personal injury, economic loss or damage to Owner's facilities or personal property therein;

31.5.8 The Employees may not solicit, distribute or sell products while on Owner's property. Friends, family members or other visitors of the Employees are not permitted on Owner's property; and

31.5.9 At all times, Construction Manager shall adhere to Owner's safety and security regulations, and shall comply with all security requirements at Owner's facilities, as said regulations and requirements may be modified or changed by Owner from time to time.

## **32. PROJECT MEETINGS.**

32.1 Prior to the commencement of Work, Construction Manager shall attend a preconstruction conference with Owner and Design Professional and others as appropriate to discuss the Master Project Schedule, procedures for handling shop drawings and other

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

### **33. MATERIAL SAFETY DATA SHEET.**

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

### **34. AUDITING RIGHTS.**

34.1 Construction Manager shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of three (3) years from the date of termination of this Contract or the date the Project is completed, whichever is later or such longer period of time as may be required by law. Construction Manager shall require all of its subcontractors to likewise retain all of their Project records and supporting documentation. Owner, and any duly authorized agents or representatives of Owner, shall be provided access to all such records and supporting documentation at any and all times during normal business hours upon request by Owner. Further, Owner, and any duly authorized agents or representatives of Owner, shall have the right to audit, inspect and copy all of Construction Manager's and any subcontractor's Project records and documentation as often as they deem necessary and Construction Manager shall cooperate in any audit, inspection, or copying of the documents. These access, inspection, copying and auditing rights shall survive the termination of this Contract.

34.2 If at any time, Owner conducts such an audit of Construction Manager's records and documentation and finds that Construction Manager overcharged Owner, Construction Manager shall pay to Owner the Overcharged Amount which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of 12% annum). If the Overcharged Amount is equal to or greater than \$10,000.00, Construction Manager shall pay to Owner the Overcharged Amount and the Audit Amount which is defined as the total aggregate of Owner's reasonable audit costs incurred as a result of its audit of Construction Manager. Owner may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Construction Manager with regard to the Project or under any other agreement between Construction Manager and Owner. If such amounts owed Construction Manager are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Construction Manager hereby acknowledges and agrees that it shall pay such remaining amounts to Owner within thirty (30) business days of its receipt of

Owner's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

34.3 This Article 34, including all access, inspection, copying, auditing, reimbursement and repayment rights shall survive the termination of this Contract.

**35. COMPLIANCE WITH LAWS.**

35.1 Construction Manager agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, administrative orders, regulations and requirements applicable to the Project, including but not limited to those dealing with safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes). If Construction Manager observes that the Contract Documents are at variance therewith, it shall promptly notify Owner and Design Professional in writing. To the extent any law, rule, regulation, code, statute, or ordinance requires the inclusion of certain terms in this Agreement in order for this Agreement to be enforceable, such terms shall be deemed included in this Agreement. Notwithstanding anything in the Contract Documents to the contrary, it is understood and agreed that in the event of a change in any applicable laws, ordinances, rules or regulations subsequent to the date the GMP Amendment has been executed that increases the Construction Manager's time or cost of performance of the Work, Construction Manager is entitled to a Change Order for such increases, except to the extent Construction Manager knew or should have known of such changes prior to the date of the GMP Amendment.

**36. SUBCONTRACTS.**

36.1 The Construction Manager shall review the design and shall determine how it desires to divide the sequence of construction activities. Construction Manager will determine the breakdown for award of subcontracts, based on the current Project Schedule, and shall supply a copy of that breakdown and composition to Owner and Design Professional for their review and approval. Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and costs.

36.2 A subcontractor is any person or entity who is performing, furnishing, supplying or providing any portion of the Work pursuant to a contract with Construction Manager. Construction Manager shall be solely responsible for and have control over the subcontractors. Construction Manager shall negotiate all Change Orders, Construction Change Directive, Field Orders and Request for Proposals, with all affected subcontractors and shall review the costs of those proposals and advise Owner and Design Professional of their validity and reasonableness, acting in Owner's best interest, prior to requesting approval of each Change Order from Owner.

36.3 When Construction Manager submits its Guaranteed Maximum Price proposal to Owner, Construction Manager also shall submit to Owner a list of the names, addresses, licensing information and phone numbers of the subcontractors Construction Manager

intends to use for each portion of the Work, as well as identifying in writing those portions of the Work it intends to perform with its own employees. The list identifying each subcontractor cannot be modified, changed, or amended without prior written approval from Owner. Any and all work to be self-performed by Construction Manager must be approved in writing by Owner in its sole discretion prior to commencement of such work. Construction Manager shall periodically update that subcontractor list, so that it remains current and accurate throughout the entire performance of the Work. Construction Manager shall not enter into a subcontract with any subcontractor, if Owner reasonably objects to that subcontractor. Construction Manager shall not be required to contract with anyone it reasonably objects to. As part of the Project document file to be maintained by Construction Manager at the Project site, Construction Manager shall keep on file a copy of the license for every subcontractor and sub-subcontractor performing any portion of the Work, as well as maintain a log of all such licenses. All subcontracts between Construction Manager and its subcontractors shall be in writing and are subject to Owner's approval. Further, all subcontracts shall (1) require each subcontractor to be bound to Construction Manager to the same extent Construction Manager is bound to Owner by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor, (2) provide for the assignment of the subcontracts from Construction Manager to Owner at the election of Owner upon termination of Construction Manager, (3) provide that Owner will be an additional indemnified party of the subcontract, (4) provide that Owner will be an additional insured on all insurance policies required to be provided by the subcontractor except workman's' compensation, (5) assign all warranties directly to Owner, (6) identify Owner as an intended third-party beneficiary of the subcontract, and (7) incorporate Exhibit E into all of its subcontracts (and require similar incorporation into all sub-subcontracts). Construction Manager shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Paragraph 36.3 and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to its sub-subcontractors.

36.4 The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (e.g., drainage, grading, roadway, utilities, pavement markings, traffic signals, pressure grout and seawall) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The subcontractor shall include a resume of experience for each employee identified by it to supervise and schedule its work.

36.5 Unless otherwise expressly agreed to by Owner in writing, all subcontracts shall provide:

36.5.1 LIMITATION OF REMEDIES - NO DAMAGES FOR DELAY

The rights and obligations of the subcontractors shall be the same as the rights and obligations of the Construction Manager under Section 11.4.

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

### **37. SOLICITATION OF SUBCONTRACTORS.**

37.1 Construction Manager accepts the relationship of trust and confidence established by this Agreement. Construction Manager covenants with Owner to utilize Construction Manager's best skill, efforts and judgment in furthering the interest of Owner; to furnish efficient business administration and supervision; and to perform the Work in the best way and the most expeditious and economical manner, consistent with the interests of Owner, and Contract terms and conditions

37.2 In order to provide the best value to the Owner, for all subcontracted work, the Construction Manager shall solicit Subcontractors in accordance with the SEP-14 and the Florida Department of Transportation, Local Agency Program Agreement.

### **38. PARTNERING.**

38.1 The Construction Manager, prior to commencement of the Construction Phase Services, shall prepare and submit for the Owner's approval a proposed Partnering Program for the Project. The Partnering Program shall contain, at a minimum, procedures for the enhancement of communication and cooperation between the Owner, Construction Manager, Design Professional, separate contractors, inspectors and other consultants and subcontractors on the Project, as well as procedures for the speedy and efficient resolution of problems and disagreements during construction. Upon approval by the Owner, the Partnering Program shall be implemented and coordinated by the Construction Manager throughout the remainder of the Project.

### **39. SECURING AGREEMENT.**

39.1 Construction Manager warrants that Construction Manager 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 Contract and that Construction Manager 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 any other consideration contingent upon or resulting from the award or making of this Contract. At the time this Contract is executed, Construction Manager shall sign and deliver to Owner the Truth-in-Negotiation Certificate attached hereto and made a part hereof as Exhibit L.

The Construction Manager's compensation shall be adjusted to exclude any sums by which Owner determines the compensation was increased due to inaccurate, incomplete, or non-current wage rates or other factual unit costs.

**40. PUBLIC ENTITY CRIMES.**

40.1 By its execution of this Agreement, Construction Manager acknowledges that it has been informed by OWNER of the terms of Section 287.133(2)(a) of the Florida Statutes which read as follows:

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

**41. EQUAL EMPLOYMENT OPPORTUNITY/NON-DISCRIMINATION/  
MWBE**

41.1 In performing all services to be provided hereunder, the Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Construction Manager shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such actions shall include, but not be limited to, the following: (i) employment, upgrading, demotion or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. The Construction Manager shall post in conspicuous places, available to all employees and applicants for employment notices setting forth the terms of this Equal Employment Opportunity Non-Discrimination Clause and stating that all qualified candidates will receive consideration for employment without regard to race, color, religion, sex or national origin. Construction Manager shall comply with Owner's current MWBE policy. With each payment application submitted by Construction Manager, as a condition precedent to its entitlement to payment, Construction Manager shall also submit, on the form attached as part of Exhibit G, a monthly written report to Owner concerning the status of all payments owed and paid by Construction Manager to its various MWBE subcontractors and suppliers. Said monthly status report shall be in such form and contain such detail as may be required by Owner.

41.2 In addition to the requirements set forth in 41.1, the Construction Manager shall adhere to the requirements of section 7-25 of the FDOT Special Provisions.



## 42. **CHANGED CONDITIONS**

42.1 Notwithstanding anything in the Contract Documents to the contrary, if conditions are encountered at the Project site which are (i) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (ii) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and which reasonably should not have been discovered by Construction Manager as part of its scope of site investigative services required pursuant to the terms of the Contract Documents, then Construction Manager shall provide Owner with prompt written notice thereof before conditions are disturbed and in no event later than seven (7) calendar days after first observance of such conditions. Owner and Design Professional shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Construction Manager's cost of, or time required for, performance of any part of the Work, Owner will acknowledge and agree to an equitable adjustment to the Contract Amount or Contract Time, or both, for such Work. If Owner determines that the conditions at the site are not materially different from those indicated in the Contract Document or not of an unusual nature or should have been discovered by Construction Manager as part of its investigative services, and that no change in the terms of the Contract is justified, Owner shall so notify Construction Manager in writing, stating its reasons. Claims by Construction Manager in opposition to such determination by Owner must be made within seven (7) calendar days after Construction Manager's receipt of Owner's written determination notice. If Owner and Construction Manager cannot agree on an adjustment to the Contract Amount or Contract Time, the parties shall comply with the dispute resolution procedure set forth in the Contract Documents.

## **END OF GENERAL TERMS AND CONDITIONS**

## **EXHIBIT B**

### **SUPPLEMENTAL TERMS AND CONDITIONS**

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

A. Construction Manager shall provide the Owner, its representatives and the Design Professional with two copies each of a Policy and Procedure Manual developed and updated in accordance with the following requirements

1. Upon execution of the Agreement, the Construction Manager shall develop a draft of the comprehensive Policy and Procedure Manual describing the services to be provided by the Construction Manager per the Contract Documents. This shall provide a plan for the control, direction, coordination and evaluation of the Work performed throughout the Project; the Project organization including identification of key personnel, responsibilities of the Construction Manager, Owner and Design Professional; Work flow diagrams; and strategy for bidding and subcontracting the Work. The Owner shall have the right to review the Policy and Procedure Manual and to approve its content and format. The Policy and Procedure Manual may be updated as necessary throughout the Pre-Construction and Construction Phases, but substantive changes will not be made without the Owner's prior written concurrence. In developing the Policy and Procedure Manual, the Construction Manager shall coordinate and consult with the Owner and the Design Professional. The initial manual shall be submitted to the Owner for approval.
2. Contents of Policy and Procedure Manual: The Policy and Procedure Manual shall describe in detail the procedures for executing the Work and the organizations participating. The Policy and Procedure Manual shall include, as a minimum, the following sections:
  - 2.1 Project Definition: The known characteristics of the Project and sub-projects shall be described in general terms which will provide the participants a basic understanding of the Project and sub-projects.
  - 2.2 Project Goals: The schedule, budget, physical, technical and other objectives for the Project shall be defined.
  - 2.3 Project Strategy: A narrative description of the Project delivery methods which shall be utilized to accomplish the Project goals.
  - 2.4 Project Work Plan: A matrix display of the Work to be performed by the Construction Manager, as well as the services and items to be

furnished by the Design Professional and the Owner during each phase of the Project.

- 2.5 Project Organization: A summary organization chart showing the interrelationships between the Owner, the Construction Manager and the Design Professional, and other supporting organizations and permitting review agencies. Detailed charts, one each for the Construction Manager and Design Professional, showing organizational elements participating in the Project shall be included.
  - 2.6 Responsibility Performance Chart: A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Design Professional, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the Project. The Construction Manager shall develop a similar chart for the personnel within its own organization who are assigned to the Project, as well as for the Design Professional's and Owner's personnel assigned to the Project from data supplied by them.
  - 2.7 Flow Diagrams: These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress, and change orders.
  - 2.8 Written Procedure: The Construction Manager will provide written procedures for communications and coordination required between the Construction Manager, Design Professional and Owner throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications
  - 2.9 Emergency Contact List: A complete list of the names, company affiliation and emergency contact phone numbers (both day and night) for all key Project personnel from Owner, Construction Manager and Design Professional, as well as from all subcontractors, subconsultants and suppliers of any of them. This list shall be continuously updated by Construction Manager throughout the Project duration, with Construction Manager distributing a copy of all updates to Owner and Design Professional.
3. This Policy and Procedure Manual shall be completed and submitted to the Design Professional and Owner for their review and Owner's approval as a condition precedent to payment by Owner to Construction Manager for any services provided in the Construction Phase under this Contract.

4. This Policy and Procedure Manual is merely an amplification and clarification of this Contract. Any conflicts between the Policy and Procedure Manual and this Contract shall be governed by the latter.

B. Construction Manager shall provide the following Project Management Information System (“PMIS”), which system shall be in place for both the Pre-Construction Phase and Construction Phase services to be provided by Construction Manager pursuant to this Contract.

1. General:

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

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

- 1.3 If requested by the Owner, the Construction Manager shall conduct a comprehensive workshop in Pinellas County, Florida, for participants designated by the Owner and additional seminars as required by Owner to provide instruction with respect to the PMIS. This workshop and the seminars shall facilitate each participant’s and the Owner’s representatives’ use and understanding of the PMIS.

- 1.4 The PMIS shall be described in terms of the following major subsystem:

- 1.4.1 Narrative Reporting

- 1.4.2. Schedule Control

- 1.4.3. Cost Control and Estimating

- 1.4.4. Project Accounting

- 1.4.5. Accounting and Payment

- 1.4.6. Action Reports

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

2. Narrative Reporting Subsystem.

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

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

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

2.2.2. A Monthly Cost Narrative describing the current construction cost estimate status of the Project.

2.2.3. A Monthly Scheduling Narrative summarizing the current status of the overall Master Project Schedule and an explanation of all variances from the plan. This report shall include an analysis of the various Project subschedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.

2.2.4. A Monthly Accounting Narrative describing the current cost and payment status for the entire Project. This report shall relate current encumbrances and expenditures to the budget allocations. An explanation for all variances shall be provided.

2.2.5. A Monthly Construction Progress Report during the Construction Phase summarizing the Work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations, programs, permits, construction problems and recommendations, and plans for the succeeding month.

2.2.6. A Daily Construction Diary during the Construction Phase describing events and conditions on the site.

2.3. The Reports outlined in subparagraphs 2.2.1 through 2.2.5 above shall be bound with applicable computer schedule reports and submitted monthly during Design and Construction Phases and shall be current through the end of the preceding month. Copies shall be delivered to the Owner and the Design Professional. A bound copy of the complete diary shall be submitted to the Owner at the conclusion of the Project.

3. Schedule Control Subsystem.

- 3.1. Construction Schedule: The Construction Manager shall prepare and submit to the Owner and Design Professional, for their review and approval, a Construction Schedule. This schedule shall conform to the format outlined in Paragraph 3.4 below. The approved Construction Schedule shall be attached to the GMP Amendment. The Construction Schedule shall be integrated into the Master Project Schedule.
  - 3.1.1. Following development and approval of the Construction Schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the Construction Schedule which shall be submitted to the Owner in duplicate. No additional compensation will be due the Construction Manager for making such updates. Failure of the Construction Manager to update, revise, and submit the Construction Schedule as aforesaid shall be sufficient grounds for the Owner to find the Construction Manager in substantial default hereunder and that sufficient cause exists to terminate the Contract or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Owner is submitted.
- 3.2. The Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:
  - 3.2.1. Subcontractor Construction Schedules (Subnetworks): Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule taking into account the Work schedule of the other subcontractors. The subcontractor's construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The subcontractor's construction schedule also shall show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.
  - 3.2.2. Occupancy Schedule: The Construction Manager shall jointly develop with the Design Professional and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy and shall be integrated into the Master Project Schedule.

- 3.3 Schedule Format: The Construction Schedule shall be planned and recorded with a Critical Path Method (CPM) schedule in the form of an activity-on-node diagram. All activity-on-node diagrams shall include the Activity Identification, Activity Description, and the type of relationship between activities, including any lead or lag time, as well as being cost loaded. Further, the Construction Schedule shall incorporate and be based upon the Project milestone dates set forth in Exhibit I to the Agreement.
- 3.3.1. No activity shall have a duration greater than fifteen (15) work days or less than one (1) work day except by prior approval of the Owner. If requested by the Owner or Design Professional, the Construction Manager shall furnish any information needed to justify the reasonableness of activity durations. Such information shall include, but not be limited to, estimated activity manpower, anticipated quantities, and production rates.
- 3.3.2. Procurement shall be identified with at least two (2) activities: fabrication and delivery. Construction Manager shall insure that all Work activities that require a submittal are preceded by the appropriate submittal and approval activities.
- 3.3.3. Only contractual constraints shall be shown in the schedule logic. No other restraints are allowed unless approved in writing by the Owner or Design Professional. This disallowance of constraints includes the use of any mandatory start or finish dates selected by Construction Manager.
- 3.3.4. Activities shall be identified by codes to reflect the responsible party for the accomplishment of each activity (only one party per activity), the Phase/Stage of the Project for each activity, and the Area/Location of each activity
- 3.3.5. The construction time for the Work, or any milestone, shall not exceed the specified Contract Time. Logic or activity durations shall be revised in the event that any milestone or Contract completion date is exceeded in the schedule.
- 3.3.6. Float is defined as the amount of time between when an activity “can start” (the early start) and when an activity “must start” (the late start). It is understood by the Owner and the Construction Manager that float is a shared commodity, not for the exclusive use or financial benefit of either party. Either party has the full use of the float until it is depleted.
- 3.3.7. The CPM schedules must be compatible with Primavera Project Planner Software, version 5.0 or later, by Primavera Systems, Inc.,

Bala Cynwyd, PA. It is the Construction Manager's responsibility to ascertain the software compatibility with the Owner or Design Professional.

3.3.8. Initial Schedule Submittal Requirements:

- 3.3.8.1. Predecessor/Successor Sort
- 3.3.8.2. Total Float/Early Start Sort
- 3.3.8.3. Responsibility/Early Start Sort
- 3.3.8.4. Area/Early Start Sort
- 3.3.8.5. Logic Diagram: Produce diagram with not more than 100 activities per ANSI D (24-inch x 36-inch) size sheet. Insure each sheet includes title, match data or diagram correlation, and key to identify all components used in the diagram.
- 3.3.8.6. Narrative discussing general approach to completion of the Work.
- 3.3.8.7. Diskette in Primavera .XER(P35.0) format.

3.3.9. Schedule Update Requirements: The Construction Manager shall update the schedules monthly to show actual, current progress. The schedule updates shall be submitted within seven (7) calendar days of the data dates. The updates shall include:

- 3.3.9.1. Dates of activities' actual starts and completions.
- 3.3.9.2. Percent of Work remaining for activities started but not completed as of the update date.
- 3.3.9.3. Narrative report including a listing of monthly progress, the activities that define the critical path and any changes to the path of critical activities from the previous update, sources of delay, any potential problems, requested logic changes, and Work planned for the next month.
- 3.3.9.4. Predecessor/Successor Sort
- 3.3.9.5. Total Float/Early Start Sort
- 3.3.9.6. Responsibility/Early Start Sort
- 3.3.9.7. Area/Early Start Sort
- 3.3.9.8. Diskette in the required Primavera format
- 3.3.9.9. Detailed listing of requested logic changes.
- 3.3.9.10. Updated logic diagram as required by the Owner. At a minimum, the Owner shall require a final logic diagram at the end of the Work showing the planned and actual starts and completions.
- 3.3.9.11. A bar chart comparison of the updated schedule to the initial schedule. This diagram shall show actual



and planned performance dates for all completed activities.

3.3.9.12. All update information shall be an accurate representation of the actual Work progress.

3.4. Recovery Schedule: If the initial schedule or any current updates fail to reflect the Work's actual plan or method of operation, or a contractual milestone date is more than fifteen (15) days behind, the Owner may require that a recovery schedule for completion of the remaining Work be submitted. The Recovery Schedule must be submitted within seven (7) calendar days of the Owner's request. The Recovery Schedule shall describe in detail the Construction Manager's plan to complete the remaining Work by the required Contract milestone date. The Recovery Schedule submitted shall meet the same requirements as the original Construction Schedule. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Contract milestone dates.

3.5. Change Orders: When a Change Order is proposed, the Construction Manager must identify all logic changes as a result of the Change Order. The Construction Manager shall include, as part of each Change Order proposal, a sketch showing all schedule logic revisions, duration changes, and the relationships to other activities in the approved Construction Schedule. This sketch shall be known as the fragnet for the change. Upon acceptance of the fragnet, the Construction Manager will revise the Construction Schedule or current update. The logic changes required by the Change Order will be considered incidental to the Construction Manager's work. No separate payment will be made.

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

4.1. Pre-Construction Phase Estimates, if applicable; and

4.2. At establishment of the GMP.

5. Project Accounting Subsystem: This subsystem shall enable the Construction Manager to plan effectively and the Owner to monitor and control the funds available for the Project, cash flow, costs, Change Orders, Construction Change Directives, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable, and also

enable the Owner to stay informed as to the overall Project status. All reports to be generated as part of this subsystem shall be consistent with the Project Funding Schedule (if any). This subsystem will be produced and updated monthly and includes the following reports:

- 5.1. Costs Status Report representing the budget, estimate, and base commitment (awarded subcontracts and purchase orders) for any given subcontract or budget line item. It shall show approved Change Orders and Construction Change Directive for each subcontract which when added to the base commitment will become the total commitment. Pending Change Orders also will be shown to produce the total estimated probable cost to complete the Work.
- 5.2. A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
- 5.3. A Detailed Status Report showing the complete activity history of each item in the Project accounting structure and includes an earned value graph. It shall include the budget, estimate, and base commitment figures for each subcontract. It shall give the Change Order history, including Change Order numbers, description, proposed and approved dollar amounts. It also shall show all pending or rejected Change Orders.
- 5.4. A Cash Flow Diagram showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
- 5.5. A Job Ledger shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

**EXHIBIT C**  
**FORM OF PAYMENT BOND**

BOND NO. \_\_\_\_\_

**PUBLIC PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_  
as Principal, and \_\_\_\_\_, as Surety, located at  
\_\_\_\_\_ (Business Address) are held and firmly bound to  
\_\_\_\_\_, as Obligee in the sum of (\$\_\_\_\_\_) for the  
payment whereof we bind ourselves, our heirs, executors, personal representatives, successors  
and assigns, jointly and severally.

**WHEREAS,** Principal has entered into a contract dated as of the \_\_\_\_ day of  
\_\_\_\_\_, 2006, with Obligee for \_\_\_\_\_

in accordance with drawings and specifications, which contract is incorporated by reference and  
made a part hereof, and is referred to as the Contract.

**THE CONDITION OF THIS BOND** is that if Principal:

2. Promptly makes payment to all claimants as defined in Section 255.05(1),  
Florida Statutes, supplying Principal with labor, services, materials or supplies, used directly or  
indirectly by Principal in the prosecution of the Work provided for in the Contract, then this  
bond is void; otherwise it remains in full force.

Any changes in or under the Contract and compliance or noncompliance with any  
formalities connected with the Contract or the changes do not affect Surety's obligation under  
this Bond.

The provisions of this bond are subject to the time limitations of Section  
255.05(2). In no event will the Surety be liable in the aggregate to claimants for more than the  
penal sum of this Payment Bond, regardless of the number of suits that may be filed by  
claimants.

**IN WITNESS WHEREOF**, the above parties have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2006, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered

**PRINCIPAL:**

in the presence of:

\_\_\_\_\_

\_\_\_\_\_

Witnesses as to Principal

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_ as identification.

My Commission Expires:

\_\_\_\_\_  
Notary Public (Signature)

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title or Rank)

\_\_\_\_\_  
(Serial Number, if any)

ATTEST:

SURETY:

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_

\_\_\_\_\_  
(Authorized Signature)

Witnesses as to Surety

\_\_\_\_\_  
(Printed Name)

**OR**

\_\_\_\_\_  
\_\_\_\_\_  
Witnesses

As Attorney in Fact  
(Attach Power of Attorney)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Telephone Number)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_, as \_\_\_\_\_, of \_\_\_\_\_. Surety, on behalf of Surety. He/She is personally known to me **OR** has produced \_\_\_\_\_ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title or Rank)

\_\_\_\_\_  
(Serial Number, if any)

**EXHIBIT D**

**FORM OF PERFORMANCE BOND**

BOND NO. \_\_\_\_\_

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_  
as Principal, and \_\_\_\_\_, as Surety, located at \_\_\_\_\_  
\_\_\_\_\_ (Business Address) are held and firmly bound to  
\_\_\_\_\_, as Obligee in the sum of  
\_\_\_\_\_ (\$ \_\_\_\_\_) for the payment  
whereof we bind ourselves, our heirs, executors, personal representatives, successors and  
assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the \_\_\_\_\_ day of \_\_\_\_\_,  
2006, with Obligee for \_\_\_\_\_.

in accordance with drawings and specifications, which contract is incorporated by reference and  
made a part hereof, and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

3. Performs the Contract at the times and in the manner prescribed in the Contract; and
4. Pays Obligee any and all losses, damages, expenses, costs and attorneys' fees, including appellate proceedings, that Obligee sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by Obligee; and
5. Performs the guarantee of all Work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Surety's obligation under this Bond.

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

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

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

**IN WITNESS WHEREOF**, the above parties have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2006, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered  
in the presence of:

**PRINCIPAL:**

Witnesses as to Principal

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title or Rank)  
\_\_\_\_\_  
(Serial Number, if any)

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Witnesses as to Surety

\_\_\_\_\_

\_\_\_\_\_  
Witnesses

SURETY:

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Printed Name)

**OR**

As Attorney in Fact  
(Attach Power of Attorney)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Telephone Number)



STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_, as \_\_\_\_\_

of \_\_\_\_\_, Surety, on behalf of Surety. He/She is personally known to me **OR** has produced \_\_\_\_\_ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title or Rank)

\_\_\_\_\_  
(Serial Number, if any)

**EXHIBIT E**

**INSURANCE REQUIREMENTS**

The amounts and types of insurance shall conform to the minimum requirements listed below with the use of Insurance Services Office (ISO) forms and endorsements or broader where applicable. All self-insured retentions or deductibles will be Construction Manager’s sole responsibility.

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

Workers’ Compensation - Florida Statutory Requirements

Employer’s Liability –

Bodily Injury by Accident	\$1,000,000 .00	each accident
Bodily Injury by Disease	\$1,000,000 .00	each employee
Bodily Injury by Disease	\$1,000,000 .00	policy limit

Longshoreman and Harbor Workers Compensation Act Coverage shall be maintained by Construction manager and its subcontractors and suppliers, if applicable, for coverage for benefits owed under the Longshoreman and Harbor Workers Compensation Act, for all employees engaged on this project in maritime employment on navigable waters of the United States or in adjoining areas.

Maritime Coverage Endorsement shall be maintained for Construction manager and its subcontractors and suppliers, if applicable, whose employees who are engaged on this project for maritime claims or damages under the applicable maritime laws, including, claims for transportation, wages, maintenance, and cure. The amount of such insurance shall not be less than:

Bodily Injury by Accident	\$1,000,000	each accident
Bodily Injury by Disease	\$1,000,000	aggregate

The insurance company shall waive claims rights against Owner.

II. Commercial General Liability Insurance, written on an “occurrence” basis, shall be maintained by Construction Manager. Coverage, as provided by 1986 (or later) ISO commercial general liability form, shall include, but not be limited to, Bodily Injury, Contractual for this Agreement, Independent Contractors, Premises Operations, Explosion, Collapses and Underground, Broad Form Property Damage, Personal Injury and Fire Legal Liability

Coverages. ISO Endorsement CG 22 79 or CG 22 80 (Limited Exclusion – Contractor’s – Professional Liability) also must be provided. Completed Operations coverage must be maintained by Construction Manager for not less than five (5) years following completion and acceptance by Owner of the Work performed by Construction Manager at each Project Site assigned to it. Limits of coverage shall not be less than the following for Bodily Injury, including Death, Property Damage and Personal Injury Combined Single Limits:

General Aggregate	\$2,000,000.00
Products - Completed Operations Aggregate	\$2,000,000.00
Personal and Advertising Injury	\$1,000,000.00
Each Occurrence	\$1,000,000.00
Fire Damage (Any One Fire)	\$ 50,000.00
Medical Expenses per person	\$ 5,000.00
Contract Specific Project Aggregate Limits	\$ same as above

The aggregate limits shall be separately applicable to this Contract through the use of an endorsement approved by Owner. Applicable deductibles or self-insured retention, shall be the sole responsibility of Construction Manager.

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

\$1,000,000.00 Combined Single Limit each accident for  
Bodily Injury, including Death & Property Damage Liability

IV. Umbrella Liability Insurance or Excess Liability Insurance shall not be less than \$5,000,000.00 each occurrence and aggregate. Coverage shall be excess of the US L&H, Maritime, Employers Liability, Commercial General Liability and Automobile Liability coverages required herein and shall include all coverages on a “following form” basis. Coverage shall drop down as primary on the exhaustion of any aggregate limit. The aggregate limits shall apply separately to this Contract, and the specific contract aggregate limits shall be evidenced by the use of an endorsement approved by Owner. If Umbrella policy does not cover any mandated coverage, then that coverage must have its own limits to meet this requirement.

V. Pollution Professional Legal Liability Insurance shall be \$5,000,000 each claim and annual aggregate including contractual liability covering environmental claims for bodily injury and property damage defined as physical injury to or destruction of tangible property damage coverage including the resulting loss of use of damaged property thereof or of tangible property that has not been physically injured, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims as well as for professional and pollution arising out of covered operations performed by the Construction Manager or its Subcontractors or others who may be liable described under the scope of services of this Agreement. This coverage will include Professional Liability arising out of your direct or vicarious liability for operations performed on this project.

**EXHIBIT F**

**RELEASE AND AFFIDAVIT**

STATE OF FLORIDA            )  
COUNTY OF \_\_\_\_\_)

Before me, the undersigned authority, personally appeared \_\_\_\_\_,  
who after being duly sworn, deposes and says:

(1) In accordance with the Contract Documents and in consideration of \$\_\_\_\_\_ paid, \_\_\_\_\_ (“Construction Manager”) releases and waives for itself and its subcontractors, materialmen, successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against The County Commissioners of Pinellas County, Florida, a body corporate existing under the laws of the State of Florida (“Owner”) relating in any way to the performance of the Agreement between Construction Manager and Owner, dated \_\_\_\_\_, 200\_\_, for the period from \_\_\_\_\_ to \_\_\_\_\_.

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

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

(4) Construction Manager certifies that it has paid all its subcontractors and materialmen in full all amounts owed them from any previous payments received by Construction Manager from Owner and has not withheld any such amounts. In the event Construction Manager withholds any unpaid amounts due to its subcontractors and/or materialmen from the payment it receives from Owner with respect to the Application for Payment referenced in paragraph 5 below, Construction Manager agrees to immediately refund all such unpaid amounts to Owner.

(5) This Release and Affidavit is given in connection with Construction Manager’s [monthly/final] Application for Payment No.\_\_\_\_\_.

**Construction Manager:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_ President

Date: \_\_\_\_\_

\_\_\_\_\_  
Witnesses

[Corporate Seal]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/She is personally known to me or has produced a \_\_\_\_\_ (state) driver's license no. \_\_\_\_\_ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title or Rank)

\_\_\_\_\_  
(Serial Number, if any)

**EXHIBIT G**

**CONSTRUCTION MANAGER APPLICATION FOR PAYMENT**

**[INSERT FORM OF PAYMENT APPLICATION, MWBE STATUS REPORT,  
AND SCHEDULE OF VALUES]**

**EXHIBIT H**  
**CHANGE ORDER**

CHANGE ORDER NO. \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NO.: \_\_\_\_\_

Under our AGREEMENT dated \_\_\_\_\_, 2006.

\*\*\*\*\*

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

For the (Additive) (Deductive) Sum of: \_\_\_\_\_  
(\$\_\_\_\_\_).

Original Agreement Amount \$\_\_\_\_\_

Sum of Previous Changes \$\_\_\_\_\_

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

Present Agreement Amount \$\_\_\_\_\_

The time for completion shall be (increased/decreased) by \_\_\_\_\_ calendar days due to this Change Order. Accordingly, the Contract Time is now \_\_\_\_\_ (\_\_\_\_\_) calendar days and the Substantial Completion date is \_\_\_\_\_. Your acceptance of this Change Order shall constitute a modification to our Agreement and will be performed subject to all the same terms and conditions as contained in our Agreement indicated above, as fully as if the same were repeated in this acceptance. The adjustment, if any, to the Agreement shall constitute a full and final settlement of any and all claims arising out of or related to the change set forth herein, including claims for impact and delay costs.

Accepted: \_\_\_\_\_, 20\_\_

**Construction Manager:**

\_\_\_\_\_

By: \_\_\_\_\_

**OWNER:**

The County Commissioners of Pinellas County,  
Florida

By: \_\_\_\_\_

**DESIGN PROFESSIONAL:**

\_\_\_\_\_

By: \_\_\_\_\_



**EXHIBIT I**

**PROJECT SCHEDULE MILESTONES**

**EXHIBIT J**

**CONSTRUCTION MANAGER'S STAFFING SCHEDULE**

I. Pre-Construction Phase Services:

<u>Name</u>	<u>Title/Position</u>	<u>Company Affiliation</u>	<u>% Assigned to Pre Construction Phase</u>
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II Construction Phase Services:

<u>Name</u>	<u>Title/Position</u>	<u>Company Affiliation</u>	<u>% Assigned to Project</u>
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**EXHIBIT K**

**GMP AMENDMENT TO AGREEMENT BETWEEN  
OWNER AND CONSTRUCTION MANAGER**

**AMENDMENT NO. 1 TO AGREEMENT BETWEEN OWNER  
AND CONSTRUCTION MANAGER for  
SR 699 (Gulf Blvd.) from PARK BOULEVARD to WALSINGHAM ROAD  
ROADWAY and UTILITIES IMPROVEMENTS PROJECT**

**AGREEMENT NO. \_\_\_\_\_**

Pursuant to Sections 4B and 7A of the Agreement, dated \_\_\_\_\_, between the Board of County Commissioners of Pinellas County, a political subdivision of the State of Florida (“Owner”) and PBS&J Constructors, Inc. (“Construction Manager”), with respect to the construction of the Owner’s SR 699 (Gulf Blvd) from Park Boulevard to Walsingham Road, Roadway and Utilities Project (“Project”), the Owner and Construction Manager hereby agree to amend and modify the Agreement by this Amendment and establish a Guaranteed Maximum Price and Contract Time for all the Work as set forth below:

**ARTICLE 1**

**SCOPE OF WORK**

The scope of the Work consists of the construction of a SR 699 (Gulf Blvd) from Park Boulevard to Walsingham Road, Roadway and Utilities Project , in accordance with the Agreement, this Amendment and the other Contract Documents listed as Attachments 1 through \_\_\_ below, which are hereby incorporated into and made a part of the Amendment by this reference:

<u>Attachment No.</u>	<u>Description</u>	<u>Pages</u>	<u>Date</u>
1.	List of Drawings and Specifications	___ through ___	_____
2.	Allowance	___ through ___	_____
3.	Assumptions and Clarifications	___ through ___	_____
4.	Completion Schedule	___ through ___	_____
5.	Schedule of Value	___ through ___	_____
6.	List of Itemized General Conditions	___ through ___	_____
7.	List of Subcontractors and Major Suppliers	___ through ___	_____

**ARTICLE 2**

**GUARANTEED MAXIMUM PRICE**

2.1 Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Section 5 of the Agreement, the Construction Manager's Fee as defined in Section 4 of the Agreement, and the Contingency as defined below; is \_\_\_\_\_, (\$\_\_\_\_\_)

2.2 The Subcontract Costs as defined in Section 5. A. 2 of the Agreement, for the entire Work anticipated on this project will be based on actual Subcontractor invoices to the Construction Manager up to the established amount of \_\_\_\_\_ (\$\_\_\_\_\_). Said amount is included within the above noted GMP.

2.3 The Construction Manager's Fee as defined in Section 4. B of the Agreement, for the entire Work anticipated on this Project is hereby established as a lump sum amount of \_\_\_\_\_ (\$\_\_\_\_\_), said lump sum amount is included within the above noted GMP.

2.4 The General Condition expenses as defined in Section 4. B of the Agreement, for the entire Work anticipated on this Project are hereby established as a lump sum amount of \_\_\_\_\_ (\$\_\_\_\_\_), said lump sum amount is included within the above noted GMP. The items included as General Condition expenses are listed in the List of Itemized General Conditions attached hereto and incorporated herein as Attachment No. 3.

2.5 In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the required Work and are otherwise reimbursable without duplication as a Cost of the Work, but excluding all items that are to be reimbursed under the lump sum General Condition expense amount noted in paragraph 2.4 above, the parties have agreed to establish a Construction Manager's Contingency within the GMP. Construction Manager's Contingency funds may be increased by Change Order. Construction Manager shall not proceed with any portion of the Work, which it intends to charge against this contingency without first obtaining Owner's express written authorization to proceed. The Construction Manager acknowledges and agrees that any work which is to be charged against the Construction Manager's Contingency funds that does not receive such prior written approval from the Owner shall be deemed to be part of Construction Manager's basic Work compensated within the GMP and not chargeable against the Construction Manager's Contingency.

2.5.1 The Construction Manager's Contingency shall be utilized to compensate for the increased Cost of the Project incurred by the Construction Manager due to unforeseen circumstances relating to construction of that Project which resulted in an unavoidable increase in costs, except when deemed the responsibility of the Owner.

2.5.2 The Construction Manager will be required to furnish documentation evidencing all expenditures charged to the Construction Manager's Contingency, and demonstrating that the costs incurred were necessary for the Work. Construction Manager shall identify the amount sought to be charged to the Construction Manager's Contingency and the reasons why the amount should be charged to that Contingency.

2.5.3 The Construction Manager's Contingency shall be established as an amount of \_\_\_\_\_ (\$\_\_\_\_\_) and is included within the above noted GMP.

2.6 Monthly installment payment of the Cost of the Work, General Conditions, the Construction Manager's Fee and the utilized Contingency; shall be paid monthly based upon the percent completion of the Work for each particular month. The percent completion shall be based on the approved updated Construction Schedule as required in Exhibit B, Supplemental Terms and Conditions, Section 3.3.9.

2.7 Construction Manager recognizes that this Contract includes work for trench excavation in excess of five feet deep. Construction Manager acknowledges the requirements set forth in Section 553.63 of the Florida Statutes titled Trench Safety Act. Construction Manager certifies that the required trench safety standards will be in effect during the period of construction of the Project and Construction Manager agrees to comply with all such required trench safety standards.

2.7.1 The amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) has been separately identified for the cost of compliance with the required trench safety standards; said amount is included within the Article 2.1 above.

2.8 The GMP may be adjusted pursuant to the terms herein for Change Order and Construction Change Directive.

### **ARTICLE 3**

#### **CONTRACT TIME**

3.1 The Construction Phase Commencement Date for the Work is \_\_\_\_\_. The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the Work is \_\_\_\_\_ (\_\_\_\_\_) calendar days ("Contract Time"). THE SUBSTANTIAL COMPLETION DATE IS THEREFORE ESTABLISHED AS \_\_\_\_\_.

3.2 Pursuant to this Agreement, the parties have established a liquidated damage rate for reasons stated therein, which the parties acknowledge and agree apply to this Amendment and Construction Manager's responsibility to complete the Work within the Contract Time as stated herein. Accordingly, the liquidated damage rate established in this Agreement shall be

assessed from Construction Manager for each calendar day Construction Manager fails to achieve Substantial Completion for the Designated Work within the Contract Time.

3.3 The Owner desires to expedite construction on this Project to minimize the inconvenience to the traveling public and reduce the time of construction. In order to achieve this, in addition to Liquidated Damages as described in Section 7 of the Construction Management Agreement, an incentive provision is established. In the event the Construction Manager completes the Project prior to the expiration of the Contract Time as defined in Exhibit K, Article 3.1 above, and as modified in accordance with Exhibit H, the Owner will pay the Construction Manager an early incentive bonus of \_\_\_\_\_ for each calendar day the actual Substantial Completion date precedes the Substantial Completion Date as described in the Contract Documents.

**ARTICLE 4**

**MISCELLANEOUS**

4.1 Except as expressly modified herein, the terms and conditions of the Agreement remain unchanged. In the event of a conflict between the terms of this Amendment and those of the Agreement, Owner and Construction Manager agree that the terms of this Amendment shall prevail and control.

**OWNER:**

**CONSTRUCTION MANAGER:**

Pinellas County  
Board of County Commission

PBS&J Constructors, Inc.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: Mitchell W. Becker  
Its: President  
Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

**Attachment 1**  
**List of Drawings, Specifications, and Addendums**

See Attached

**Attachment 2**  
**Schedule of Values**

<b>Item</b>	<b>Amount</b>
Roadway	\$xxx,xxx
Asphalt	
Seawall	
Pressure Grouting	
Pavement Markings	
Signing	
Traffic Signals	
Water-Pinellas County Water	
Reclaimed Water-Pinellas County Utilities	
Sanitary Sewer-Pinellas County	
Sanitary Sewer-City of Indian Rocks Beach	
Gas-Clearwater Gas	





**Attachment 4**  
**List of Alternates**

**Attachment 5**  
**Assumptions and Clarifications**

See Attached

**Attachment 6**  
**Completion Schedule**

See Attached

**Attachment 7**  
**List of Sub-Contractors and Major Suppliers**

<b>Category of Work</b>	<b>Sub-Contractor or Supplier</b>	
Maintenance of Traffic		
Construction Staking		
Roadway and Drainage		
Signing and Marking		
Paving		
Seawall		
Pressure Grout		
Public Information		

**EXHIBIT L**

**TRUTH-IN-NEGOTIATION CERTIFICATE**

In compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, PBS&J Constructors, Inc. hereby certifies that wage rates and other factual unit costs supporting the compensation for the construction management services of CONSTRUCTION MANAGER to be provided under this Agreement, concerning Construction Management at Risk Services, SR 699, from Park Blvd to Walsingham Rd., Project No. 1149, are accurate, complete and current as of the time of contracting.

**CONSTRUCTION MANAGER:**

PBS&J CONSTRUCTORS, INC.

By: \_\_\_\_\_

Print Name: Mitchell W. Becker

Title: President

Date: \_\_\_\_\_

**EXHIBIT M**

**CERTIFICATE OF INSURANCE FORM**

**EXHIBIT N**

**LOCAL AGENCY AGREEMENT**

State of Florida Department of Transportation

**LOCAL AGENCY PROGRAM AGREEMENT**

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FPN: 257083 1 58 01 _____	Fund: SIB1, LF _____	FLAIR Approp: _____
Federal No: _____	Org. Code: 55074010706 _____	FLAIR Obj.: _____
FPN: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org. Code: _____	FLAIR Obj.: _____
County No. Pinellas (15) _____	Contract No: _____	Vendor No.: F 596000800-218_

Catalog of Federal Domestic Assistance (CFDA): 20.205 Highway Planning and Construction

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THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006\_ by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter called the Department, and PINELLAS COUNTY, hereinafter called the Agency.

**WITNESSETH:**

WHEREAS, the Agency has the authority to enter into said Agreement and to undertake the project hereinafter described, and the Department has been granted the authority to function adequately in all areas of appropriate jurisdiction including the implementation of an integrated and balanced transportation system and is authorized under Section 334.044, Florida Statutes to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

**1.0 Purpose of Agreement:** The purpose of this Agreement is to provide for the Department's participation in the Gulf Boulevard (SR 699) Resurfacing/Reconstruction Project as further described in Exhibit "A" attached hereto and by this reference made a part hereof, hereinafter called the project, and to provide departmental financial assistance to the Agency and state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

**1.01 Modifications and Additions:** Exhibit(s) A, AR, B, C and D are attached hereto and by this reference made a part hereof.

**2.00 Accomplishment of the Project:**



**2.01 General Requirements:** The Agency shall commence, and complete the project as described in EXHIBIT "A" with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Agency Program Manual, which by this reference is made a part hereof as if fully set forth herein.

A full time employee of the Agency, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in charge of each project.

**2.02 Expiration of Agreement:** The Agency agrees to complete the project on or before December 31, 2009. If the Agency does not complete the project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. Expiration of this Agreement will be considered termination of the project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

**2.03 Pursuant to Federal, State, and Local Law:** In the event that any election, referendum, approval, permit, notice, or other proceeding or authorization is requisite under applicable law to enable the Agency to enter into this Agreement or to undertake the project hereunder, or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.

**2.04 Funds of the Agency:** The Agency shall initiate and prosecute to completion all proceedings necessary, including Federal- aid requirements, to enable the Agency to provide the necessary funds for completion of the project.

**2.05 Submission of Proceedings, Contracts and Other Documents:** The Agency shall submit to the Department such data, reports, records, contracts and other documents relating to the project as the Department and the Federal Highway Administration may require.

### **3.00 Project Cost:**

**3.01 Total Cost:** The estimated total cost of the project is \$19,130,852 (*nineteen million, one hundred thirty thousand, eight hundred fifty two dollars*). This amount is based upon the schedule of funding in Exhibit "B" attached hereto and by this reference made a part hereof. The AGENCY agrees to bear all expenses in keeping with the

Project Scope that are in excess of the estimated total cost of the project and any deficits involved. The schedule of funding may be modified by mutual agreement as provided for in 4.00 of this agreement.

**3.02 Department Participation:** The Department agrees to participate, including contingencies, in the project cost to the extent provided in Exhibit "B". This amount includes Federal-aid funds which are limited to the actual amount of Federal-aid participation.

**3.03 Limits on Department Funds:** Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible project costs is subject to:

- a) Legislative approval of the Department's appropriation request in the work program year that the project is scheduled to be committed;
- b) Availability of funds as stated in paragraphs 3.04 and 3.05 of this Agreement;
- c) Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement;
- d) Department approval of the project scope and budget at the time appropriation authority becomes available.

**3.04 Appropriation of Funds:** The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See Exhibit B for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.

**3.05 Multi-Year Commitment:** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"(a) The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing

herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

**3.06 Notice to Proceed:** No cost may be incurred under this contract until the Agency has received a Notice to Proceed from the Department.

**3.07 Limits on Federal Participation:** Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported, the Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for Federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, Federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or project costs in part or in total.

For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Agency shall promptly reimburse the Department for all such amounts within 90 days of written notice.

**4.00 Project Estimate and Disbursement Schedule:** Prior to the execution of this Agreement, a project schedule of funding, shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the project and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved schedule of funding for the project. The schedule of funding may be revised by mutual written agreement between the Department and the Agency. If revised, a copy of the revision should be forwarded to the Department's Comptroller and to the Department's Federal-Aid Program Office. No increase or decrease shall be effective unless it complies with fund participation requirements established in Exhibit "B" of this Agreement and is approved by the Department's Comptroller.

#### **5.00 Records:**

**5.01 Establishment and Maintenance of Accounting Records:** Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five

(5) years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred includes the Agency's general accounting records and the project records, together with supporting documents and records, of the Agency and all subcontractors performing work on the project and all other records of the Agency and subcontractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the five (5) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**5.02 Costs Incurred for the Project:** The Agency shall charge to the project account all eligible costs of the project. Costs in excess of the latest approved schedule of funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs.

**5.03 Documentation of Project Costs:** All costs charged to the project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.

**5.04 Audit Reports:** Recipients of Federal and State funds are to have audits done annually using the following criteria:

Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency. State awards will be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the awarding State Agency.

In the event that a recipient expends \$300,000 or more in Federal awards in its fiscal year, the recipient must have a single or program specific audit conducted in accordance with the **United States Office of Management and Budget (OMB) Circular A-133**.

If a recipient expends less than \$300,000 in federal awards during its fiscal year, an audit conducted in accordance with the **OMB Circular A-133** is not required. If a recipient expends less than \$300,000 in federal awards during its fiscal year and elects to have an audit conducted in accordance with **OMB Circular A-133**, the cost of the audit must be paid from non-federal funds.

Reporting Packages and management letters generated from audits conducted in accordance with **OMB Circular A-133** shall be submitted to the awarding FDOT office, by the recipient, within 30 days of receiving it. The aforementioned items are to be received by the appropriate FDOT office no later than 9 months after the end of the recipient's fiscal year.

The recipient shall follow up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit finding is required. Current year audit findings require corrective action and status of finding.

Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to the FDOT, the Comptroller, and the Office of the Auditor General.

The recipient shall submit required audit documentation as follows:

A Reporting Package and Data Collection Form for each audit conducted in accordance with **OMB Circular A-133** shall be sent to:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10<sup>th</sup> Street  
Jefferson, IN 47132

**5.05 Inspection:** The Agency shall permit, and shall require its contractors to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the project.

The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency or any contractor, sub-contractor or materials vendor to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement. (Section 287.058(1)(c), Florida Statutes)

**5.06 Uniform Relocation Assistance and Real Property Statistical Report:** For any project requiring additional right of way, the Agency must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 CFR 24, Appendix B and be submitted to the Department no later than October 15 each year.

**6.00 Requisitions and Payments:** Requests for reimbursement for fees or other compensation for services or expenses incurred shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. (Section 287.058(1)(a), Florida Statutes)

All recipients of funds from this agreement, including those contracted by the Agency, must submit bills for any travel expenses, when authorized by the terms of this agreement, in accordance with Section 112.061 Florida Statutes and Chapter 3-Travel of the Department's Disbursement Operations Manual, Topic 350-030-400. (Section 287.058(1)(b), Florida Statutes)

If, after project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of contract by the Department.

**7.00 The Department's Obligations:** Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not, to make a payment if:

**7.01 Misrepresentation:** The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

**7.02 Litigation:** There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the project, the Agreement or payments to the project;

**7.03 Approval by Department:** The Agency shall have taken any action pertaining to the project, which under this Agreement, requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

**7.04 Conflict of Interests:** There has been any violation of the conflict of interest provisions contained herein in 12.06; or

**7.05 Default:** The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

**7.06 Federal Participation:** The Department may suspend or terminate payment for that portion of the project which the FHWA, or the Department acting in lieu of the FHWA, may designate as ineligible for federal-aid.

**7.07 Disallowed Costs:** In determining the amount of the payment, the Department will exclude all projects costs incurred by the Agency prior to the effective date of this Agreement or the date of authorization, costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding for the project, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

**7.08 Final Invoices:** The Agency must submit the final invoice on the project to the Department within 120 days after the completion of the project. Invoices submitted after the 120 day time period will not be paid.

## **8.00 Termination or Suspension of Project:**

**8.01 Termination or Suspension Generally:** The Department may, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

If the Department determines that the performance of the Agency is not satisfactory, the Department shall have the option of (a) immediately terminating the Agreement or (b) suspending the Agreement and notifying the Agency of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time. Suspension of the contract will not affect the time period for completion of this Agreement.

If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Agency, the Department shall notify the Agency of such termination, with instructions as to the effective date of termination or specify the stage of work at which this Agreement is terminated.

If the Agreement is terminated before performance is completed, the Agency shall be paid for the work satisfactorily performed. Payment is to be on the basis of substantiated costs.

**8.02 Action Subsequent to Notice of Termination or Suspension.** Upon receipt of any final termination or suspension notice under this paragraph, the Agency shall proceed promptly to carry out the actions required therein which may include any or all of the following: (a) necessary action to terminate or suspend, as the case may be, project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the financing is to be computed; (b) furnish a statement of the project activities and contracts, and other undertakings the cost of which are otherwise includable as project costs. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and cost as approved by the Department or upon the basis of terms and conditions imposed by the Department

upon the failure of the Agency to furnish the schedule, plan, and estimate within a reasonable time. The closing out of federal financial participation in the project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

#### **9.00 Contracts of the Agency:**

**9.01 Third Party Agreements:** Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same.

**9.02 Compliance with Consultants' Competitive Negotiation Act:** It is understood and agreed by the parties hereto that participation by the Department in a project with an Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency complying in full with provisions of Section 287.055, Florida Statutes, Consultants Competitive Negotiation Act. At the discretion of the Department, the Agency will involve the Department in the Consultant Selection Process for all projects. In all cases, the Agency's attorney shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.

#### **10.00 Disadvantaged Business Enterprise (DBE) Policy and Obligation:**

**10.01 DBE Policy:** It is the policy of the Department that disadvantaged business enterprises, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable Federal and State regulations apply to this Agreement.

**10.02 DBE Obligation:** The Agency and its contractors agree to ensure that Disadvantaged Business Enterprises as defined in applicable federal and state regulations, have the opportunity to participate in the performance of contracts and this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department assisted contracts.



**10.03 Disadvantaged Business Enterprise (DBE) Obligations:** If Federal Transit Administration or FHWA Funding is a part of this project, the Agency must comply with applicable federal and state regulations.

**11.00 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (Applicable to all Federal-aid contracts – 49 CFR 29)**

By signing and submitting this Agreement, the Agency is providing the certification set out below:

The inability of the Agency to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify the Agency from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available, Department may terminate this transaction for cause of default.

The Agency shall provide immediate written notice to the Department if any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. Contact the Department for assistance in obtaining a copy of those regulations.

The Agency further agrees by executing this Agreement that it shall not knowingly enter into any contracts with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.

The Agency further agrees by submitting this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all contracts and in all solicitations for contracts.

The Agency may rely upon a certification of a prospective sub-contractor that the person is not debarred, suspended, ineligible, or voluntarily excluded from the covered

transaction, unless it knows that the certification is erroneous. The Agency may decide the method and frequency by which it determines the eligibility of its sub-contractors. The Agency may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the Agency is not required to exceed that which is normally processed by a prudent person in the ordinary course of business dealings.

Unless authorized by the Department, if the Agency knowingly enters into a contract with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available, the Department may terminate this transaction for cause or default.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:**

The Agency certifies, by execution of this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the Agency is unable to certify to any of the statements in this certification, an explanation shall be attached to this proposal.

## **12.00 Restrictions, Prohibitions, Controls, and Labor Provisions:**

**12.01 Equal Employment Opportunity:** In connection with the performance of any project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Agency shall insert the foregoing provision in all contracts modified only to show the particular contractual relationship in all its contracts in connection with the development of operation of the project, except contracts for the standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to

employees and applicants for employment for project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

**12.02 Title VI - Civil Rights Act of 1964:** The Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Regulations of the Federal Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto.

The Agency shall include provisions in all contracts with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

**12.03 Americans with Disabilities Act of 1990 (ADA):** The Agency will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and assurance by the Agency pursuant thereto.

**12.04 Public Entity Crime:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**12.05 Discrimination:** In accordance with Section 287.134 F.S., an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

**12.06 Prohibited Interests:** Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement in connection with the project or any property included or planned to be included in the project in which any member, officer or employee of the Agency or the locality during his tenure or for two years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the Agency, the Agency with prior approval of the Department may waive the prohibition contained in this subsection, provided, that any such present member, officer

or employee shall not participate in any action by the Agency or the locality relating to such contract, subcontract, or arrangement.

The Agency shall insert in all contracts entered into in connection with the project or any property included or planned to be included in any project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the Agency or of the locality during his tenure or for two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this subsection shall not be applicable to any agreement between the Agency and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

**12.07 Interest of Members of, or Delegates to, Congress:** No member or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

### **13.00 Miscellaneous Provisions:**

**13.01 Environmental Regulations:** The Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department for any loss incurred in connection therewith. The Agency will be responsible for securing any applicable permits.

**13.02 Department Not Obligated to Third Parties:** The Department shall not be obligated or liable hereunder to any party other than the Agency.

**13.03 When Rights and Remedies Not Waived:** In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

**13.04 How Agreement Is Affected by Provisions Being Held Invalid:** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

**13.05 Bonus or Commission:** By execution of the Agreement, the Agency represents that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

**13.06 State Law:** Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the project.

**13.07 Contractual Indemnity:** To the extent permitted by law, the Agency shall indemnify, defend, save, and hold harmless the Department and all its officers, agents and employees from any claim, loss, damage, cost, charge or expense arising out of any act, error, omission or negligent act by the Agency, its officers, agents or employees during the performance of the Agreement except that neither the Agency, its officers, agents or its employees will be liable under this paragraph for any claim, loss damage, cost, charge or expense arising out of any act, error, omission or negligent act by the Department or any of its officers, agents or employees during the performance of the Agreement.

When the Department receives a notice of claim for damages that may have been caused by the Agency in the performance of services required under this Agreement, the Department will immediately forward the claim to the Agency. The Agency and the Department will evaluate the claim and report their findings to each other within 14 working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of the Agency in the defense of the claim or to require the Agency defend the Department in such claim as described in this section. The Department's failure to promptly notify the Agency of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the Agency. The Department and the Agency will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial.

The parties agree that this clause shall not waive the benefits or provisions of Chapter 768.28, Florida Statutes, or any similar provision of law.

**13.08 Plans and Specifications:** In the event that this Agreement involves constructing and equipping of facilities on the State Highway System, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the project and comments or recommendations covering any remainder of the project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval with said remainder of the

project. Failure to obtain this written approval shall be sufficient cause of nonpayment by the Department.

**13.09 Right of Way Certification:** Upon completion of right of way activities on the project, the Agency must certify compliance with all applicable federal and state requirements. Certification is required prior to advertisement for or solicitation of bids for construction of the project, including those projects for which no right of way is required.

**13.10 Agency Certification:** The Agency will certify in writing, prior to project closeout, that the project was completed in accordance with applicable plans and specifications, is in place on the Agency facility, that adequate title is in the Agency, and that the project is accepted by the Agency as suitable for the intended purpose.

**13.11 Agreement Format:** All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**13.12 Execution of Agreement:** This Agreement may be simultaneously executed in a minimum of two counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

**13.13 Restrictions on Lobbying:**

**Federal:** The Agency agrees that no federally appropriated funds have been paid, or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federally appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Agency shall require that the language of this section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**State:** No funds received pursuant to this contract may be expended for lobbying the Legislature or a state agency.

**13.14 Maintenance:** The Agency agrees to maintain any project not on the State Highway System, constructed under this Agreement. If the Agency constructs any improvement on Department right-of-way, the Agency will maintain the improvements made for their useful life.

**13.15 Vendors Rights:** Vendors (in this document identified as Agency) providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five 5 working days to inspect and approve the goods and services unless the bid specifications, purchase order or contract specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Florida Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within 40 days after receipt of the invoice and receipt, inspection, and approval of goods and services, a separate interest penalty in accordance with Section 215.422(3)(b), Florida Statutes, will be due and payable, in addition to the invoice amount to the Agency. Interest penalties of less than one \$1 will not be enforced unless the Agency requests payment. Invoices which have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Florida Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from the Department. The Vendor Ombudsman may be contacted at (850)410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

**BOARD OF COUNTY COMMISSIONERS  
OF TRANSPORTATION  
PINELLAS COUNTY**

**STATE OF FLORIDA DEPARTMENT**

By: \_\_\_\_\_  
Chairman  
Development

By: \_\_\_\_\_  
Scott W. Collister, P.E.  
District Director of Transportation

Attest: \_\_\_\_\_  
Title:

Attest: \_\_\_\_\_  
Title:

As to form:

As to form:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
District Attorney

\* See attached Encumbrance Form for date of funding approval by Comptroller.



**EXHIBIT A**  
**Project Description and Responsibilities**

This exhibit forms an integral part of that certain Reimbursement Agreement between the State of Florida, Department of Transportation and Pinellas County, dated , 2006\_.

**PROJECT LOCATION:**

Pinellas County. SR 699 (Gulf Boulevard) from 192<sup>nd</sup> Avenue to Walsingham/Ulmerton Road.

The project is not on the National Highway System.  
The project is on the State Highway System.

**PROJECT DESCRIPTION:**

This project entails the construction and relocation of water, sewer and reclaimed water facilities and resurfacing/reconstruction activities of SR 699 (Gulf Boulevard) from 192<sup>nd</sup> Avenue to Walsingham Road. The project is a joint venture with the Agency being responsible for costs associated with the construction and relocation of water, sewer and reclaimed water facilities and the Department bearing responsibility for costs associated with the resurfacing/reconstruction activities.

**SPECIAL CONSIDERATION BY AGENCY:**

The Agency will utilize Year 2004 FDOT Standard Specifications, and supplements thereto, as amended through July 31, 2005 for the project.

The Agency will be issued Notice to Proceed for the project by the Department upon final execution of this agreement. Construction related activities conducted prior to Notice to Proceed will not be reimbursed. Prior to execution of this agreement, the Agency will provide to the Department for review, comment and certification, the Local Agency Program Construction and Administrative Checklists currently required by FHWA.

The Agency will provide to the Department, upon final execution of this agreement, a schedule of the expected completion date and milestones for project construction. For

projects and instances where the Department has provided environmental permitting, the Agency will provide as-built plans to the Department for project close-out.

The Agency shall be responsible for identification and remediation of any hazardous materials and contamination encountered while implementing their portion of the project.

The Agency will schedule and hold regular coordination/status meetings to ensure the project is being constructed according to appropriate guidelines and standards. The Agency will notify the Department of the date and time of such meetings in a manner that provides sufficient time for the Department to have a representative present.

**The Agency will let the construction contract prior to June 30, 2006. If the Agency cannot meet this letting date, the Department must be notified in writing and a new project letting date provided prior to June 1, 2006. Failure to comply with this requirement may be cause for termination of this project agreement and withdrawal of Department funding.**

#### **SPECIAL CONSIDERATION BY DEPARTMENT:**

The Department will issue Notice to Proceed to the Agency upon final execution of this agreement.

Upon receipt of an invoice, the DEPARTMENT will have forty five (45) working days to review and approve the goods and services submitted for payment.

The Department will appoint a Project Manager/Coordinator to monitor all project activities and provide general oversight and guidance as he/she deems appropriate.

The Department will provide project oversight, including inspection and quarterly evaluations, as outlined in the attached LAP Construction Oversight Procedure.

*The following terms and conditions are incorporated by reference and made a part of this agreement as though fully set forth therein. These terms modify the standard FORM 525-010-40 OGC-11/02 as follows:*

**3.01 Total Cost** is amended to include “The Department agrees to bear all expenses in keeping with the project scope for its portion of the project which is determined to be its responsibility.

**13.08 Plans and Specifications** is amended as follows: The Department has provided all engineering plans and specifications with regards to the resurfacing of SR 699 to the Agency. The Agency will utilize Year 2004 FDOT Specifications, as amended through December 31, 2005, upon execution of this agreement.

**13.10 Agency Certification** is amended as follows: The Agency will certify in writing, prior to project closeout, that the project was completed in accordance with applicable plans and specifications and that the project is accepted by the Agency as suitable for the intended purpose.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

## EXHIBIT AR

The administration of resources awarded by the DEPARTMENT to the AGENCY may be subject to audits and/or monitoring by the DEPARTMENT, as described in this section. This exhibit replaces item 5.04 – Audit Reports.

### MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see “AUDITS” below), monitoring procedures may include, but not be limited to, on-site visits by DEPARTMENT’ staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the DEPARTMENT. In the event the DEPARTMENT determines that a limited scope audit of the recipient is appropriate, the AGENCY agrees to comply with any additional instructions provided by the DEPARTMENT staff to the AGENCY regarding such audit. The AGENCY further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the DEPARTMENT’s Office of Inspector General (OIG) and Florida’s Chief Financial Officer (CFO) or Auditor General.

### Audits

#### PART I: FEDERALLY FUNDED

Recipients of federal funds (i.e. state, local government, or non-profit organizations as defined in OMB Circular A-133, as revised) are to have audits done annually using the following criteria:

1. In the event that the recipient expends \$500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. EXHIBIT 1 to this agreement indicates Federal resources awarded through the Department by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1., the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

3. If the recipient expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. However, if the recipient elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).
4. Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency.

## **PART II: STATE FUNDED**

Recipients of state funds (i.e. a nonstate entity as defined by Section 215.97(2)(l), Florida Statutes) are to have audits done annually using the following criteria:

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services and the CFO; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement indicates state financial assistance awarded through the Department by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. However, if the recipient elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's

resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

4. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

### **PART III: OTHER AUDIT REQUIREMENTS**

The recipient shall follow up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.

Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to the FDOT, the Department of Financial Services, and the Auditor General. This section does not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

### **PART IV: REPORT SUBMISSION**

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:

A. The Department at each of the following addresses:

Lawrence Taylor  
District JPA/LAP Administrator  
11201 North McKinley Drive, MS 7-500  
Tampa, FL 33612

- B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10<sup>th</sup> Street  
Jeffersonville, IN 47132

- C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.
2. In the event that a copy of the reporting package for an audit required by PART I of this agreement and conducted in accordance with OMB Circular A-133, as revised, is not required to be submitted to the Department for reasons pursuant to section .320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to each of the following:

Lawrence Taylor  
District JPA/LAP Administrator  
11201 North McKinley Drive, MS 7-500  
Tampa, FL 33612

In addition, pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at each of the following addresses:

Lawrence Taylor  
District JPA/LAP Administrator  
11201 North McKinley Drive, MS 7-500  
Tampa, FL 33612

3. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:

A. The Department at each of the following addresses:

Lawrence Taylor  
District JPA/LAP Administrator  
11201 North McKinley Drive, MS 7-500  
Tampa, FL 33612

B. The Auditor General's Office at the following address:

Auditor General's Office  
Room 401, Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

4. Copies of reports or the management letter required by PART III of this agreement shall be submitted by or on behalf of the recipient directly to:

A. The Department at each of the following addresses:

Lawrence Taylor  
District JPA/LAP Administrator  
11201 North McKinley Drive, MS 7-500  
Tampa, FL 33612

5. Any reports, management letter, or other information required to be submitted to the Department pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
6. Recipients, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

#### **PART V: RECORD RETENTION**

1. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of at least five years from the date the audit report is issued, and shall allow the Department, or its designee, CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department, or its designee, CFO, or Auditor General upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the Department.



## EXHIBIT – 1

**FEDERAL** and/or **STATE** resources awarded to the recipient pursuant to this agreement should be listed below. If the resources awarded to the recipient represent more than one Federal or State program, provide the same information for each program and the total resources awarded. **Compliance Requirements** applicable to each Federal or State program should also be listed below. If the resources awarded to the recipient represent more than one program, list applicable compliance requirements for each program in the same manner as shown here:

- (e.g., What services or purposes the resources must be used for)
- (e.g., Eligibility requirements for recipients of the resources)
- (Etc...)

**NOTE:** Instead of listing the specific compliance requirements as shown above, the State awarding agency may elect to use language that requires the recipient to comply with the requirements of applicable provisions of specific laws, rules, regulations, etc. The State awarding agency, if practical, may want to attach a copy of the specific law, rule, or regulation referred to.

### **FEDERAL RESOURCES**

<u>Federal Agency</u> <u>Amount</u>	<u>Catalog of Federal Domestic Assistance (Number &amp; Title)</u>
--	--

#### Compliance Requirements

- 1.
- 2.
- 3.

### **STATE RESOURCES**

<u>State Agency</u> <u>Amount</u>	<u>Catalog of State Financial Assistance (Number &amp; Title)</u>
--------------------------------------	---

Compliance Requirements

- 1.
- 2.
- 3.

Matching Resources for Federal Programs

Federal Agency  
Amount

Catalog of Federal Domestic Assistance (Number & Title)

Compliance Requirements

- 1.
- 2.
- 3.

**NOTE: Section .400(d) of OMB Circular A-133, as revised, and Section 215.97(5)(a), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.**

<b>AGENCY NAME &amp; BILLING ADDRESS</b> Mr. Pic Talley, P.E. Director of Utilities Pinellas County 440 Court Street Clearwater, FL 33756	STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION LOCAL AGENCY PROGRAM AGREEMENT <b>EXHIBIT "B"</b> SCHEDULE OF FUNDING	FPN: 257083 1 58 01
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**PROJECT DESCRIPTION**

Name SR 699 (Gulf Boulevard) Reconstruction Project Length N/A

Termini 192<sup>nd</sup> Avenue to Walsingham/Ulmerton Road

<b>TYPE OF WORK By Fiscal Year</b>		<b>FUNDING</b>		
		(1) TOTAL PROJECT FUNDS	(2) AGENCY FUNDS	(3) STATE & FEDERAL FUNDS
<b>P.E.</b>	2002-2003	_____	_____	_____
	<u>2003-2004</u>	_____	_____	_____
	2004-2005	_____	_____	_____
	Total PE Cost	_____	_____	_____
<b>Right-of-Way</b>	2002-2003	_____	_____	_____
	<u>2003-2004</u>	_____	_____	_____
	2004-2005	_____	_____	_____
	Total Right of Way Cost	_____	_____	_____
<b>Construction</b>	2002-2003	_____	_____	_____
	<u>2003-2004</u>	_____	_____	_____
	2004-2005	19,130,852	5,430,852	13,700,000
	<u>2005-2006</u>	_____	_____	_____
Total Contract Costs		_____	_____	_____
<b>Construction Engineering and Inspection</b>	2002-2003	_____	_____	_____
	<u>2003-2004</u>	_____	_____	_____
	2004-2005	_____	_____	_____
	Total Construction Engineering	_____	_____	_____
Total Construction Cost		19,130,852	_____	13,700,000
<b>ESTIMATED TOTAL COST OF THE PROJECT</b>		<b>\$19,130,852</b>	<b>\$5,430,852</b>	<b>\$ 13,700,000</b>

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after July 1st each fiscal year. The Department will notify the Agency, in writing, when funds are available.

## Exhibit C

### **SR 699/Gulf Boulevard Reconstruction Project FDOT LAP Construction Oversight Procedure and FHWA Special Conditions**

The Local Agency will send to the FDOT Construction Project Coordinator (FCPC) a copy of the approved (previously by FDOT Production) Plans, Specifications, and Estimate (PS&E).

The Local Agency will notify the FCPC when and where the Pre-construction conference is to be held.

The FCPC shall attend or send an appropriate delegate to the Pre-bid Meeting and Pre-construction conference.

The FCPC will provide concurrence on the approval of the Contractor's Quality Assurance Plan using The Construction Project Administration Manual (CPAM) section 5.8 and the contract specifications as supporting documentation.

The FCPC will conduct quarterly Consultant Construction Engineering Evaluations in accordance with CPAM Chapter 4.

The FCPC shall process invoices and conduct periodic field and administrative reviews using the CPAM Inspection Guidelines and Critical Requirements as a guide (see CPAM section 5.9).

The FCPC will periodically attend project meetings.

he FCPC will request an update on the project monthly

The FCPC, in coordination with the Local Agency and other appropriate parties, will conduct the final project inspection and review the final invoice prior to processing and approval by the District LAP Administrator. Project closeout will then occur.

FHWA, in approving the SEP 14 for the project, also imposed the following conditions:

- 1) This SEP-14 approval is not tied to our May 12, 2003 approval of the CM@Risk method and must be reported on independently. The May 2003 approval of CM@Risk was given only for rest areas, welcome centers and other similar types of non-tradition highway construction involving a combination of roadway and building construction, with each proposed project subject to FHWA approval.

2) In addition to the concepts listed in the enclosed Work Plan section titled "Measure and Reporting," the final evaluation report must include the following items:

a. Cost comparisons between the CM@Risk and the traditional design-bid-build delivery method using:

- i) Unit prices (average unit prices such as cost/square foot) or other units of measurement as appropriate.
- ii) Total cost (including all design, construction and administrative costs).

b. Schedule comparison between the CM@Risk and the traditional design-bid-build delivery method considering the total project delivery time, from preliminary engineering through final acceptance for construction.

c. Quality comparison between the CM@Risk and the traditional design-bid-build delivery method (to the extent that quantitative measurements are available).

d. Degree of innovation (including increased constructability or value engineering) that resulted from the CM@Risk method in comparison with the traditional design-bid-build delivery method.

3) The FDOT shall establish a centralized data collection process to monitor, track, evaluate and report trends periodically on all projects utilizing contracting mechanisms approved by FHWA under SEP-14 or SEP-15. Also, any evaluation reports required by the approved Work Plans and Exhibits shall be timely submitted to the FHWA Florida Division by the FDOT Central Office.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

EXHIBIT D  
ALTERNATIVE PAY METHOD

Article 6.00 is expanded by the following:

The Department will pay to the Agency, after receipt of an invoice, an amount equal to the invoice received by the Agency from the Agency's contractor(s) or consultant(s). All invoices received from the Agency shall clearly separate the cost to the contractor(s) or consultant(s) from the Agency's cost billed to the Department. All Agencies' costs invoiced must have been incurred by the Agency prior to the date of the invoices. All invoices submitted to the Department must provide complete documentation, including a copy of the contractor(s) or consultant(s) invoice, to substantiate the cost on the invoice. The Agency must certify on each invoice that the costs from the contractor(s) or consultant(s) are valid and have been incurred by the contractor(s) or consultant(s). Each monthly invoice subsequent to the first invoice from the Agency must contain a statement from the Agency that the previous month's cost incurred by the contractor(s) or consultants(s) has been paid by the Agency to the contractor(s) or consultant(s).

March 10, 2005 (LT) \_\_\_\_\_  
Date Advance Payment Approval  
Received from FDOT Comptroller

**EXHIBIT O**

**FEDERAL REQUIREMENTS**  
**LAP CHECKLIST FOR CONSTRUCTION CONTRACTS (PHASE 58)**

March 13, 2006

Project Title: S.R. 699 (Gulf Boulevard)  
from Park Boulevard to Walsingham Road  
Roadway and Utilities Improvement

Financial Management Number: 257083 1 58 01

Federal-aid Project Number: 1255 022 U

County: Pinellas

Municipality: Indian Shores & Indian Rocks Beach

Project Status: Design 100%, Construction 0%

Contract Amount: To be established during GMP negotiations

Federal-aid Highway: Yes

NHS: No

SHS: Yes

Requirement	Reference	NHS/SHS	Non-NHS/SHS	Non-NHS/Non-SHS	Non-Federal-aid Highway/Non-SHS	Local Agency Responsibility	District Monitoring Responsibilities	Reference Construction Contract Documents (Location in Contract)	Local Agency Check	District Check (FDOT)
1. PS&E Submittal	LAP Agreement – Section 13.08  LAP Manual Chapter 4 Section 2	Yes	Yes	No*	No*	Submit Plans, Specifications, and Estimate to FDOT for approval. Submittal also must include; <ul style="list-style-type: none"> <li>assurances that all right-of-way (ROW) clearances, utility, and railroad work have been completed, or that arrangements have been made for coordination during construction with proper notice provided in the bid proposal;</li> <li>assurances that the NEPA process has been completed</li> </ul> <p>* During this mandatory certification process all PS&amp;E packages should be submitted and those on the NHS and SHS will need to be approved by FDOT all others should be reviewed.</p>	Review/approve PS&E Assembly	PS&E package submitted from EOR directly to FDOT District 7.  The submittal included the PS&E prepared for Pinellas County Utilities.		
2. Audits	49 CFR Subtitle A Part 90 48 CFR 31 FAR	Yes	Yes	Yes	Yes	Local Agencies are to have audits done annually using the criteria outlined in section 5.04 of the LAP Agreement.	Review Local Agency records to ensure the annual audit is in compliance with section 5.04 of the LAP Agreement.	See LAP Agreement Section 5.04, Audit Reports		
3. Bonding and prequalification	23 CFR 635.110	Yes	Yes	No	No	The Local Agency shall certify that Florida DOT Pre-qualified Contractors will be used to perform LAP projects when on the NHS or SHS. However, when the project is on the NHS or SHS, and the contract is under \$250,000 than a pre-qualified contractor is not required. Per FDOT Standard Specifications 2-1 Prequalification of Bidders.	Review bid document for inclusion of the provision.	See Exhibit C, Form of Payment Bond, and Exhibit D, Form of Performance Bond, and Exhibit, F, Release and Affidavit.  Pinellas County conducted a thorough pre-qualification process.  All Subcontractors doing actual work will be FDOT Pre-qualified.		
4. Buy America	23 CFR 635.410	Yes	Yes	Yes	Yes	Include FDOT's Supplemental Specification 6-12.2 in bid document.	Review bid document for inclusion of the specification.	Included in FPN 257083 Spec Package on page 77		
5. Change Orders	23 CFR 635.120	Yes	Yes	No	No	Develop procedures outlining the conditions under which a change order is allowed and include in bid document. May use section 7.3.11 of FDOT CPAM as part of procedure.	Review bid document for inclusion of the provision.	See Exhibit A, General Terms and Conditions, Section 12 "Changes in the Work" and see Exhibit H, "Change Order" of the CM Contract		



6. Claims	23 CFR 635.124	Yes	Yes	No	No	Develop procedures outlining the conditions under which a claim is allowed and include in bid document. May use section 7.5 of FDOT CPAM as a guide in this development.	Review bid document for inclusion of the provision.	See Exhibit A, General Terms and Conditions, Section 13, Claims of the CM Contract		
7. Contractor Purchased Equipment for State or Local Ownership	23 CFR 140 49 CFR Part 18  49 CFR Section 18.3	Yes	Yes	Yes	Yes	Do not allow in contract.	Review bid document to ensure exclusion of provision.	"Contractor Purchased Equipment for State or Local Ownership" is not included in "Cost of Work" in Section 5 of the CM Contract		
8. Suspension and Debarment	49 CFR 29	Yes	Yes	Yes	Yes	The Local Agency shall include certification in bid documents.	Review bid document for inclusion of the provision.	See Section 11 of the LAP Agreement.  This provision will be included in all agreements with subcontractors doing actual construction work.		
9. Disadvantaged Business Enterprise (DBE)	49 CFR 26	Yes	Yes	Yes	Yes	The Local Agency shall comply with FDOT's DBE program Plan Unless the Local Agency has a DBE Program Plan approved by the USDOT. FDOT currently has a race neutral program with a 7.9% goal.  Establish a DBE Availability goal and include in bid document.  Include DBE special provisions in bid document.  Use DBEs certified under the Florida Unified Certification Program Directory: <a href="http://www.bipincwebapps.com/biznetflorida/">http://www.bipincwebapps.com/biznetflorida/</a>	Obtain copy of the USDOT approval letter for the DBE Program Plan for highways.	Included in FPN 257083 Spec Package on pages 19-20.  A DBE availability goal will be established for this project.		

10. Equal Employment Opportunity	23 CFR 230	Yes	Yes	Yes	Yes	Include FDOT Special Provisions related to Executive Order 11246.	Review bid document for inclusion of the provision.	Included in FPN 257083 Spec Package on pages 20-22		
11. Equipment rental rates	23 CFR 635.120 48 CFR 31	Yes	Yes	Yes	Yes	Develop procedure based on 48 CFR 31 and include in bid document.	Review bid document for inclusion of the proper payment provision for rental equipment.	See Section 5, Paragraph A, "Costs of other materials and equipment, temporary facilities and related items", Subparagraph 1 g of the CM Contract		
12. Foreign Contractor and Supplier Restriction	49 CFR 30	Yes	Yes	Yes	Yes	Local Agency will use FDOT Supplemental Specification 6-12.2. and may choose to use FDOT Form 375-020-08.	Review documents to ensure compliance	Included in FPN 257083 Spec Package on pages 76-77		
13. Incentive/Disincentive Clauses	23 CFR 635.127(d,f)	Yes	No	No	No	Develop procedure based on 23 CFR 635.127 and include in bid document (if Local Agency elects to use Incentive/Disincentive). May use section 1.2.6 of FDOT CPAM as a guide in this development.	Review bid document to ensure procedure was followed. (If Local Agency elects to use Incentive/Disincentive).	N. A. see notes		
14. Indian Preference on Federal-aid Projects (Labor & Employment)	23 CFR 635.117	Yes	Yes	Yes	Yes	If utilized, must obtain FHWA approval of provision complying with 23 CFR 635.117	Verify provisions meets federal requirements.	N. A. see notes		
15. FHWA-1273	23 CFR 230	Yes	Yes	Yes	Yes	Must be included verbatim in all contracts and subcontracts.	Review bid document for inclusion of the provision.	Included as Exhibit Q to the CM Agreement.		
16. Liquidated damages	23 CFR 635.127	Yes	Yes	No	No	Develop rates based on 23 CFR 630.305 and include contract provisions.	Ensure that rates are included in bid proposal.	See Section 7, Paragraphs A through D of the CM Contract		
17. Local hiring preference	23 CFR 635.117	Yes	Yes	Yes	Yes	The Local Agency needs to certify they do not have local hiring preferences.	Review bid document to ensure exclusion of any local hiring preference.	N. A. see notes		

18. Lobbying certification	49 CFR 20	Yes	Yes	Yes	Yes	The Local Agency shall include certification in bid documents.	Review bid document for inclusion of the provision.	See Section 13.13 of the LAP Agreement  Certification attached.		
19. Method of construction (or method of bidding)	23 CFR 635.104 & 23 CFR 114(a)	Yes	Yes	Yes	Yes	Local Agency shall certify that projects will be awarded to the low responsive bidder except for Design Build as approved by the FDOT.  The method of bidding shall be in the project specifications.	Review bid document to verify compliant bidding process.	Non-traditional project.  See the CM @ Risk SEP 14 Application for the Project, "CM @ Risk Selection Process" page 13		
20. Non-collusion Provision	23 CFR 635.112(f)	Yes	Yes	Yes	Yes	The Local Agency shall include certification in bid documents.	Review bid document for inclusion of the provision.	Certification attached		
21. Owner Force Account/Cost Effective Justification	23 CFR 635B under 635.205	Yes	Yes	Yes	Yes	Owner Force Account contracting is not allowed without first establish a finding of cost effectiveness an approved by the District LAP Administrator.	Review bid document to ensure exclusion of provision or appropriate approval has been received.	N. A. see notes		
22. Patented/ Proprietary materials	23 CFR 635.411	Yes	Yes	No	No	Do not use unless there is a public interest finding approved by FDOT (if specified in bid document).	If development of a public interest finding is required, ensure that the finding approved by FDOT is included in the bid document.	See Exhibit A, General Terms and Conditions, Section 7, Submittals and Substitutions of the CM Contract		
23. Prevailing minimum wage	23 USC 113 23 CFR 633A	Yes	Yes	Yes	No	Include latest Davis-Bacon wage table(s) in the contract. Current wage tables may be obtained at: <a href="http://www.dot.state.fl.us/construction/wage.htm">http://www.dot.state.fl.us/construction/wage.htm</a> or <a href="http://www.wdol.gov/">http://www.wdol.gov/</a>	Review bid document for inclusion of the provision (wage table).	Included in Appendix R of the CM Contract		
24. Progress Payments	23 CFR 635.122	Yes	Yes	No	No	Develop contract language to ensure that payments are based on work completed, this may include stockpiled materials. Section 9-5 of FDOT Standard Specifications may be used for guidance.	Review bid document for inclusion of the provision.	See Exhibit A, General Terms and Conditions, Section 4, 5, & 6 regarding partial and final payments.		
25. Prohibition Against Convict produced materials	23 CFR 635.417	Yes	Yes	Yes	No	Develop contract language to prohibit the use of convict-produced materials and include in bid document.	Review bid document for inclusion of the provision.	Included in FPN 257083 Spec Package on pages 76-77		
26. Public Agencies in Competition with the Private Sector	23 CFR 635.112(e)	Yes	Yes	Yes	Yes	Do not allow.	Review bid document to ensure exclusion of provision.	The SEP-14 document requires that all subcontractors be listed on the Departments pre-qualified list. Public agencies are not on the list.		

27. Publicly-owned equipment	23 CFR 635.106	Yes	Yes	Yes	Yes	Do not allow in contract.	Review bid document for exclusion of the provision.	N. A. see notes		
28. Records Retention	49 CFR 18 23 CFR 18.42 FHWA 1273 Item V.2	Yes	Yes	Yes	Yes	Project records must provide adequate assurance that the quantities of completed work are determined accurately and uniformly, and be maintained for a minimum of 5 years following contract completion and acceptance.	Conduct periodic reviews to ensure compliance.	See Section 5 of the LAP Agreement		
29. Salvage Credits	49 CFR 18.36	Yes	Yes	Yes	Yes	Do not allow in contract.	Review bid document for exclusion of provision.	N. A., see notes		
30. Standardized Changes Conditions Contract Clauses	23 CFR 635.109	Yes	Yes	Yes	Yes	Develop contract language to ensure that requirements of 23 CFR 635.109 are met. Sections 4-3.2 and 5-12.6 of FDOT Supplemental Specifications and Sections 4-3 and 5-12 of FDOT Standard Specifications may be use for guidance.	Review bid document for inclusion of the provision.	Included in FPN 257083 Spec Package on pages 63-68		
31. Standard Specifications and Plans	23 CFR 630B	Yes	Yes	No	No	Local Agency will use current FDOT's specifications when the construction project is on the SHS	Review documents to ensure Local Agency is using FDOT's specifications for construction projects on the SHS	See Section 13.08 Plans and Specifications, of the LAP Agreement,  See Section 8 of the CM Contract		
32. State preference	23 CFR 635.409	Yes	Yes	Yes	Yes	Do not allow in contract.	Review bid document for exclusion of state or local preferences.	N. A. see notes		
33. State/Local Owned/Furnished/Designated Materials	23 CFR 635.407	Yes	No	No	No	If utilized, must obtain FHWA approval.	Review bid document for exclusion of materials furnished by Local Agency.	N. A. see notes		
34. Subcontracting	23 CFR 635.116	Yes	Yes	No	No	Develop contract language to meet the requirements.	Review bid document for inclusion of the provision.	See the CM @ Risk SEP 14 Application for the Project		
35. Termination of contract	23 CFR 635.125	Yes	Yes	No	No	Develop contract language for termination for cause, convenience, and default and include in bid document.	Review bid document for inclusion of the provision.	See Exhibit A, General terms and Conditions, Section 21, & 22, of the CM Contract		
36. Time extensions	23 CFR 635.121	Yes	Yes	No	No	Include reasons time extensions are allowed in specifications. May use section 8-7.3.2 of FDOT Standard Specifications for Road and Bridge Construction as guide.	Review bid document for inclusion of the provision.	See Exhibit A, General Terms and Conditions, Section 12, Changes in Work, of the CM Contract		

## EXPLANATORY NOTES

### FEDERAL REQUIREMENTS

#### LAP CHECKLIST FOR CONSTRUCTION CONTRACTS (PHASE 58)

Requirement No.	Explanation
#3	Form of Payment and Performance Bond is Attached
#5	Exhibit A, General Terms and Conditions, Section 12 "Changes in the Work", of the CM Agreement is attached.
#6	Exhibit A, General Terms and Conditions, Section 13 "Claims and Disputes", of the CM Agreement is attached.
#13	Incentive/disincentive not included in Contract Documents
#14	The project is not located on roads within or providing access to an Indian reservation or other Indian lands as defined under the term "Indian Reservation Roads".
#17	See Section 3, Paragraph D of the CM Agreement.
#21	Owner Force Account contracting is not contemplated on this project.
#27	The Local Agency does not intend to allow the use of publicly owned equipment on this project
#29	The CM Agreement does not provide for Salvage Credits
#32	State preferences are not allowed in the CM contract or any subcontractor contract.
#33	The Local Agency will not furnish any material to this project.

Local Agency: I hereby certify that the above mentioned LAP project construction contract documents contain the provisions set forth in this checklist.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position Title

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Date

District LAP Administrator/Designee: I hereby certify that the above mentioned LAP project construction contract documents contain the provisions set forth in this checklist.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position Title

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Date

Central Office Statewide LAP Administrator: I hereby certify that the checklist is complete as indicated.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position Title

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Date

**EXHIBIT P**

**FEDERAL REQUIREMENTS**  
**LAP CHECKLIST FOR ADMINISTRATIVE OPERATIONS**

Local Agency: Pinellas County Board of County Commissioners, Utilities Department  
 County: Pinellas County  
 Municipality: Indian Shores & Indian Rocks Beach

Requirement	Reference	NHS/ SHS	Non- NHS/ SHS	Non- NHS/ Non- SHS	Non- Federal- aid Highway/ Non-SHS	Local Agency Responsibility	District Monitoring Responsibilities	Reference	Local Agency Check	District Check (FDOT)
1a. Advertising for Bids	23 CFR 635.112(d) (e) (f) (g) (h),  49 CFR 18.36	Yes	Yes	Yes	Yes	<p>The Local Agency shall advertise authorized projects a minimum of 3 weeks and make available approved plans and specifications to bidders during the advertising period.</p> <p>Approval shall be obtained by the Local Agency prior to issuing any addenda which contain a major change to the approved plans or specifications during the advertising period.</p> <p>The Local Agency shall develop a process specifically for Design Build projects that includes the solicitation for proposals including the submission, modification, revision and withdrawal of proposals.</p>	Review Local Agency procedures, guidelines, policies, etc.	<p>The Public Announcement was published on the Pinellas County Website and in the St Pete Times on February 7, 2005.</p> <p>The proposals were due on March 2, 2005</p> <p>No addenda were issued.</p> <p>Specific submittal information was listed clearly in the Public Announcement</p> <p>SEP 14 developed process for CM @ Risk, and is included in the CM Contract as Exhibit S.</p>		

2a. Bid Opening and Tabulation	23 CFR 635.113(a)	Yes	Yes	Yes	Yes	<p>The Local Agency shall publicly open and announce either item by item or by total amount all bids received in accordance with the terms of the advertisement. Any bid received and not read aloud, shall have the name of the bidder and the reason for not reading the bid aloud publicly announced at the letting.</p> <p>The Local Agency shall forward Tabulations of bids certified by a responsible official to FDOT. The tabulation shall show: (1) Bid item details for at least the low three acceptable bids and (2) The total amounts of all other acceptable bids.</p> <p>The Local Agency shall develop a process specifically for Design Build projects that includes the handling of proposals and information.</p>	Review Local Agency procedures, guidelines, policies, etc.	<p>Qualification based selection process, therefore there was no formal "Bid Opening".</p> <p>After the submission of a Technical Proposal, Three firms were short-listed and given the opportunity to make oral presentations to the Selection Committee on April 8, 2005. The Committee was made up of 4 County employees and one FDOT employee. A grading criteria was given to each firm and utilized by the Committee.</p>		
--------------------------------	-------------------	-----	-----	-----	-----	---	--	---	--	--



3a. Bid Analysis and Award of Contract	23 CFR 635.114	Yes	Yes	Yes	Yes	<p>The Local Agency shall examine the unit bid prices of the apparent low bid for reasonable conformance with the engineer's estimate. A written process should be in place for documenting the analysis of bids, determining unbalanced and non-responsive bids, identification of non-responsible bidders and the Local Agency's award/reject recommendation.</p> <p>The Local Agency shall award contracts solely on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility with the prior approval of FDOT.</p> <p>The Local Agency shall develop a process specifically for Design Build projects that includes the review and evaluation of proposals and the method of announcing the successful proposal.</p>	Review Local Agency procedures, guidelines, policies, etc.	<p>There was no Bid Analysis, per se.</p> <p>Each member of the Selection Committee individually scored the presentations based on the pre-established criteria. The scores were tabulated and the three firms were ranked.</p> <p>The Selection Committee presented its results to the Pinellas County Professional Services Selection Advisory Committee.</p> <p>The Professional Services Selection Committee consisted of two Assistant County Administrators, the Director of Public Works, the Director of Financial Services, the Director of Purchasing, the Director of Utilities, and the Director of Engineering.</p> <p>The Selection Advisory Committee reviewed all applicants and following the recommended ranking of firms, submitted to the Board of County Commissioners for approval.</p> <p>Award announcement was made via U.S. mail.</p>		
4a. Contract time	23 CFR 635.121	Yes	No	No	No	Provide procedures to be used. May use section 1.2.7 of FDOT CPAM as guide.	Review Local Agency procedures, guidelines, policies, etc.	Contract time was estimated by the Engineer of Record for the FDOT based on the MOT Phasing in accordance with FDOT procedures at the 30% and 60% reviews.		
5a. Engineer's Estimate	23 CFR 630B	Yes	No	No	No	If the project is on the NHS the Local Agency must follow FDOT's method of estimating.	Review documents to make sure a valid estimate was done for NHS projects.	A standard FDOT Computation Book utilizing FDOT Pay Items and Average Costs was created and utilized to establish the Engineer's Estimate for the FDOT components incorporated in the project.		

6a. Project Supervision and Staffing	23 CFR 635.105	Yes	Yes	Yes	Yes	Outline procedures to ensure compliance with plans and specifications. Must have a full time employee in responsible charge of the project (name and title)	Review Local Agency procedures, guidelines, policies, etc.	This will be a CQC project, with the subcontractors providing the QC, and the CM will provide the QA. Pinellas County will provide full time inspection staff and Dennis M. Simpson P. E. Senior Engineer will be the full time Pinellas County employee assigned to the project.  A third party will provide independent testing.		
7a. Warranty clauses	23 CFR 635.413	Yes	No	No	No	Provide FDOT with procedures to be used and include FDOT approved procedures in bid documents.	Review Local Agency procedures, guidelines, policies, etc.	<b>See Exhibit A, General Terms and Conditions, Section 24 “Warranty”, of the CM Contract</b>		

**EXPLANATORY NOTES**

**FEDERAL REQUIREMENTS**  
**LAP CHECKLIST FOR ADMINISTRATIVE OPERATIONS)**

Requirement No.	Explanation
1a.	SEP-14 is listed as Exhibit S

**Local Agency:** I hereby certify that the above mentioned Administration Operations contain the provisions set forth in this checklist.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position Title

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Date

**District LAP Administrator/Designee:** I hereby certify that the above mentioned Administration Operations contain the provisions set forth in this checklist.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position Title

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Date

**Central Office Statewide LAP Administrator:** I hereby certify that the checklist is complete as indicated.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position Title

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Date

**Exhibit Q**

**FHWA-1273**

**Required Contract Provisions Federal-Aid Construction Contracts**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Payment of Predetermined Minimum Wage
- V. Statements and Payrolls
- VI. Record of Materials, Supplies, and Labor
- VII. Subletting or Assigning the Contract
- VIII. Safety: Accident Prevention
- IX. False Statements Concerning Highway Projects
- X. Implementation of Clean Air Act and Federal Water Pollution Control Act
- XI. Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion
- XII. Certification Regarding Use of Contract Funds for Lobbying

Attachments

- A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

- I. GENERAL

- 1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
- 2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
- 3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
- 4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12: Section I, paragraph 2 Section IV, paragraphs 1, 2, 3, 4, and 7; Section V, paragraphs 1 and 2a through 2g.
- 5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this

clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. Selection of Labor: During the performance of this contract, the contractor shall not:
  - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
  - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

## II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
  - a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
  - b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."
2. EEO Officer: The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor

program of EEO and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
  - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
  - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
  - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
  - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
  - a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
  - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating

- against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
- c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
  - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
  - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
  - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.
6. Training and Promotion:
- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
  - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
  - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
  - d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.



7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
  - a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
  - b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
  - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
  - d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.
8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
  - a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
  - b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation

among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

- c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
9. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
    1. The number of minority and non-minority group members and women employed in each work classification on the project;
    2. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
    3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
    4. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
  - b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

**a.** By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

**a.b.** As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are

segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

b.c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

#### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1.0. General:

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for

the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

~~0.1.~~ Classification:

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
  - 1. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
  - 2. the additional classification is utilized in the area by the construction industry;
  - 3. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - 4. with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour

Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

**1.2. Payment of Fringe Benefits:**

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**1.3. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

- a. Apprentices:
  - 1. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
  - 2. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing

work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

3. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
  4. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.
- b. Trainees:
1. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
  2. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

3. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
  4. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

3.4. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

4.5. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon

prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

5.6. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

6.7. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

7.8. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as



may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

## V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

### ~~1.0.~~ Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

### ~~0.1.~~ Payrolls and Payroll Records:

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of

wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  1. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
  2. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
  3. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure

to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

~~1.0.~~ On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

- a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
- b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
- c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative Furnish Materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

~~0.1.~~ At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

#### VII. SUBLETTING OR ASSIGNING THE CONTRACT

~~1.0.~~ The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

- a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
- b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

~~0.1.~~ The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

~~1.2.~~ The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the

contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

~~2.3.~~ No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

#### VIII. SAFETY: ACCIDENT PREVENTION

~~1.0.~~ In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

~~0.1.~~ It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

~~1.2.~~ Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

#### IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

#### NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

~~1.0.~~ That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

~~0.1.~~ That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

~~1.2.~~ That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

~~2.3.~~ That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

~~1.0.~~ Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary  
Exclusion--Primary Covered Transactions

- | ~~10.11~~. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - | ~~a.~~ Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - | ~~a.~~b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - | ~~b.~~c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

- e.d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 11.12. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

0.1. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

a. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

b. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

c. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

d. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

e. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

f. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

g. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The



knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

h. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary  
Exclusion--Lower Tier Covered Transactions:

9. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

10. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

~~1.0.~~ The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

~~a.~~ If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

~~1.~~ This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite

for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

~~1.2.~~ The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

#### ATTACHMENT A - EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS

(Applicable to Appalachian contracts only.)

~~2.3.~~ During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

. To the extent that qualified persons regularly residing in the area are not available.

~~a.~~ For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

~~a.b.~~ For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

~~3.4.~~ The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

~~4.5.~~ The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

~~5.6.~~ If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

~~6.7.~~ The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**EXHIBIT R**

**DAVIS-BACON WAGE TABLE**

General Decision Number FL030039

Superseded General Decision No. FL020039

State: Florida

Construction Type:  
HIGHWAY

County(ies):

BREVARD	MANATEE	PINELLAS
COLLIER	MARTIN	POLK
HERNANDO	ORANGE	SARASOTA
HILLSBOROUGH	OSCEOLA	SEMINOLE
LEE	PASCO	ST LUCIE

EXCLUDING CAPE CANAVERAL AIR FORCE STATION, PATRICK AIR FORCE BASE, KENNEDY SPLACE FLIGHT CENTER AND MELABAR RADAR SITE

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects, & railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; & other major bridges.

Modification Number    Publication Date  
0                    06/13/2003

COUNTY(ies):

BREVARD	MANATEE	PINELLAS
COLLIER	MARTIN	POLK
HERNANDO	ORANGE	SARASOTA
HILLSBOROUGH	OSCEOLA	SEMINOLE
LEE	PASCO	ST LUCIE

SUFL3005A 08/01/1993

	Rates
BRICKLAYER, Manhole	9.02
CARPENTERS	9.71
CONCRETE FINISHER	8.91
ELECTRICIAN	13.42

FENCE ERECTOR	7.75
FORM SETTER	7.76
GRADEMAN	6.60
GUARDRAIL ERECTOR	7.95
KETTLEMAN	7.34
LABORERS:	
Asphalt Raker	7.23
Pipelayer	8.01
Unskilled	6.60
IRONWORKERS:	
Reinforcing	12.37
Structural	6.60
PAINTERS/BLASTER	10.72
POWER EQUIPMENT OPERATORS:	
Asphalt Distributor	7.39
Asphalt Paving Machine	8.23
Asphalt Plant Operator	6.83
Asphalt Screed	7.68
Backhoe	9.00
Boom-Auger	9.40
Bulldoze	8.42
Concrete Curb Machine	8.50
Concrete Groover/Grinder	9.00
Concrete Joint Saw	9.97
Concrete Paving Finish Machine	8.50
Concrete Pump Op.	13.00
Concrete Mixer Operator	6.63
Crane, Derrick, or Dragline	11.53
Earthmover	7.78
Fork Lift	7.63
Front End Loader	8.00
Gradall	8.76
Guardrail Post Driver	10.78
Mechanic	9.52
Milling Machine	8.76
Milling Machine Grade Checker	7.03
Motor Grader	9.54
Mulching Machine	6.70
Oiler, Greaseman	7.21
Pavement Striping Machine	11.04
Pavement Striping Machine Nozzleman	7.50
Power Subgrade Mixer	7.63
Piledriver Operator	10.82

Piledriver Leadsman	9.75
Rollers:	
Finish	7.24
Rough	6.70
Self-Prop., Rubber Tire	7.01
Scraper	7.33
Sign Erector	13.27
Small too	7.33
Tractors:	
Light	6.76
80 HP or less	6.60
Over 80 HP	10.62
Trenching Machine	8.00
Widening Spreader Machine	7.52
TRAFFIC CONTROL SPECIALIST	7.15
TRAFFIC SIGNALIZATION :	
Installer	9.70
Mechanic	13.25
TRUCK DRIVERS:	
Lowboy	8.02
Single Rear Axle	6.70
Multi-Rear Axle	6.97

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests or summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.  
END OF GENERAL DECISION

**EXHIBIT S**  
**SEP-14 DOCUMENT**

Pinellas County Board of County Commissioners  
Utilities Department

Work Plan  
for

SEP (Special Experimental Project) 14  
Construction Manager at Risk Contract

State Road No. 699 (Gulf Blvd.) from Park Boulevard to Walsingham Road  
Roadway and Utilities Improvement  
Pinellas County Project: 1149  
FDOT FPN: 257083 1 58 01

September 2, 2005  
(Updated November 8, 2005)

Michael Sweet, PE, DEE  
Director of Engineering  
Pinellas County Utilities Department  
14 South Ft. Harrison Avenue  
Clearwater, FL 33756

727-464-3588

State Road No. 699 (Gulf Blvd.) from Park Boulevard to Walsingham Road  
Roadway and Utilities Improvement  
Pinellas County Project: 1149  
FDOT FPN: 257083 1 58 01

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- CM @ Risk Scope
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## Introduction

Pinellas County Board of County Commissioners, Utilities Department utilizing a Local Agency Program (LAP) Agreement with the Florida Department of Transportation (FDOT), District Seven, and in cooperation with the towns of Indian Shores and Indian Rocks Beach submits this Work Plan for review and approval as a Construction Manager at Risk (CM @ Risk) project under the provisions of the Special Experimental Project No. 14 (SEP 14) for the use of innovative contracting practices. The Pinellas County Board of County Commissioners, the State of Florida, Indian Shores and Indian Rocks Beach have approved this contracting method.

The Gulf Boulevard Roadway and Utilities Improvement Project is not a typical urban roadway reconstruction project. Instead this 3 mile project is a very unique hybrid, consisting of several complex and interrelated phases with multiple public and private stakeholders. The very nature of this project is non-traditional, and the work includes:

- complete roadway reconstruction
- complete new storm sewer system, with multiple outfalls
- signalized intersection
- new sidewalks
- new reclaimed water line for Pinellas County Utilities
- new sanitary sewer facilities for Pinellas County Utilities
- a new potable water transmission and distribution system for Pinellas County Utilities
- the reconstruction of the existing seawall along the “Narrows”
- new sanitary sewer facilities for the town of Indian Rocks Beach
- new underground Progress Energy, Bright House Cable and Verizon Telephone facilities in Indian Shores
- new underground Progress Energy, Bright House Cable and Verizon Telephone facilities in Indian Rocks Beach

Located on a narrow barrier island, Gulf Boulevard is the only north-south roadway through Indian Shores and Indian Rocks Beach. All of the proposed work must be completed within a very limited 40-foot wide right-of-way, while maintaining safe and efficient traffic for both motorists and pedestrians. Additionally, due to the multiple stakeholders, three separate engineering firms were responsible for the design of the overall project. It is the intent of the FDOT, Pinellas County, the local municipalities, and Progress Energy that the CM @ Risk manage the entire project, including the private utility work.

The State of Florida has a long history utilizing alternative delivery methods, and recently FDOT District Four awarded CM @ Risk contracts as part of the construction of the \$1.35 billion Miami Intermodal Center. According to Andrew DeTizio, Major Project Engineer at FHWA’s Florida Division, “...by incorporating the contractor’s perspective and input into planning and design decisions, we can reach early agreement on project features to expedite construction...” Additionally, he stated “Ultimately, construction manager at risk fosters teamwork, between the engineer, construction manager, and FDOT, {and} we expect this

teamwork to result in a better final product”.<sup>1</sup> Florida has also used CM @ Risk for welcome center and rest area construction.

Historically, cost was the major factor in determining the winning contractor to construct Florida’s highway projects. “Low Bid” has long been the norm for doing business at FDOT, although factors other than cost are equally important. Years ago the FDOT recognized that items such as quality, delivery time, safety, life-cycle costs and use of new or improved technologies were as critical as cost.

In 1995, the Florida Legislature authorized the FDOT to use the Design-Build process for buildings, major bridges, and rail corridor projects. In 1996, this authority was further expanded to include all project types as a part of the "innovative" practices package. Specifically, Construction Management at Risk is authorized under Florida Statute § 337.025, Innovative Contracting, which has a cap of \$120 million per year. Based on F. S. 337.025 the FDOT of Transportation is authorized to establish a program for highway projects demonstrating innovative techniques of highway construction, maintenance, and finance which have the intended effect of controlling time and cost increases on construction projects. Such techniques may include, among others, innovative bidding and financing techniques. When specific innovative techniques are to be used, the FDOT is not required to adhere to those provisions of law that would prevent, preclude, or in any way prohibit the FDOT from using the innovative technique. However, prior to using an innovative technique that is inconsistent with another provision of law, the FDOT must document in writing the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive.<sup>2</sup>

The primary goal of Alternative Contracting is to improve the construction project, speed project delivery and improve the project delivery without compromising safety or quality. Timely project completion results in reduced disruptions and inconveniences to the traveling public, affected businesses and property owners, thus supporting the FDOT’s mission.”<sup>3</sup>

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<sup>1</sup> Gerald Yakowenko, "Megaproject Procurement: Breaking from Tradition," Public Roads, July/August 2004 <<http://www.tfhrc.gov/pubrds/04jul/08.htm>>.

<sup>2</sup> 2005 Florida Statutes, Title XXVI Public Transportation, Chapter 337, part 337.025 Innovative Highway Projects

<sup>3</sup> Florida Department of Transportation, Alternative Contracting [http://www.dot.state.fl.us/ProjectManagementResearchDevelopment/alt\\_contracts\\_pmr&d](http://www.dot.state.fl.us/ProjectManagementResearchDevelopment/alt_contracts_pmr&d).

## **Previous Pinellas County Experience**

Pinellas County has a very progressive Capital Improvement Program. Not only has Pinellas County managed hundreds of millions of dollars worth of traditional projects, the County has successfully managed several CM @ Risk projects in the past. Typical examples include:

### **South Cross Bayou Phase II-B Water Reclamation Facility**

The South Cross Bayou Phase II-B Water Reclamation Facility CM @ Risk project called for construction of a new wastewater plant on top of the existing plant on a tight 30-acre site while continuing to process 28 MGD and peak loads of 57 MGD. Due to the complexity of the project, Pinellas County made the procurement a CM @ Risk delivery instead of hard bid. Previously, Pinellas County had less than satisfactory results using the traditional design-low bid-build process on the previous phase of the project. After a lengthy quality-based selection process, the CM @ Risk was selected. The project was completed successfully even after the mission of the facility was changed by Pinellas County. During the construction process, several major changes were requested by Pinellas County. For example, a \$6 million pump station was added and new digesters and an Educational Center were added for \$12 million. The CM @ Risk was able to keep the project moving even with these major changes. Any delays or changes were quickly mitigated and resolved as they occurred, and litigation was avoided through the project.

### **Pinellas County Jail Expansion, Phase I, Intake Facility**

This \$34 million project was completed by Pinellas County using the CM @ Risk approach. The 275,000 square-foot facility houses approximately 800 inmates under direct supervision. In addition to the building, the project included an internal roadway system and new potable water and sanitary sewer lines.

### **Brooker Creek Educational Facility**

The \$9.2 million Brooker Creek Preserve Environmental Education Center opened in Summer of 2004. Constructed using the CM @ Risk delivery method, this 25,000 square-foot, state-of-the-art Center is a place where residents and visitors can experience, discover and understand what makes Brooker Creek Preserve special. At the core of the Center is the Exhibit Hall featuring 22 interactive exhibits, two classrooms/laboratories offer opportunities for groups to delve deeper into topics and issues beyond the exhibits and displays, and a 200-person auditorium affords an exceptional setting for presentations, workshops, and special events. The project also included about 1 mile of access roadways and all utilities needed to operate the facility.

### Weedon Island Preserve Cultural and Natural History Center

This educational facility opened in December 2002. The objective of the \$4 million Center, built using the CM @ Risk delivery method, is to interpret the natural systems found at the Preserve and the indigenous people from the area. The Center supports various educational programs at the Weedon Island Preserve, including nature walks, ongoing education activities with school groups, public workshops, and environmental presentations. A classroom laboratory provides additional opportunities to groups and an 85-person multipurpose room provides audiovisual equipment for lectures and events.

### Pinellas County Jail Expansion, Phase II, Health Care Facility

This \$36 million state of the art healthcare facility is under construction by Pinellas County using the CM @ Risk delivery method. The 162,000 square-foot, 432 bed facility is four stories and contains clinical, dental, mental health, and pharmacy areas, for both male and female inmates, as well as renovations to food service and laundry facilities. The project began in November 2004 and is expected to be complete in June 2006.

For additional information on any Pinellas County project contact Jan Herbst, P.E., Public Works Director at 727-464-3251.

## **Examples of CM @ Risk Used on Other Roadway Related Projects**

Alternative contracting techniques are intended to improve construction quality, speed project delivery, and improve the administration of highway construction projects. As such CM @ Risk contracting has been authorized by many state and local governments and is currently being used, or has been used, on several roadway projects similar to Gulf Boulevard. For example:

### **Camelback Road Pedestrian Underpass and Enhancements, City of Phoenix, AZ**

The City of Phoenix has combined two federally funded roadway and pedestrian projects and will use the CM @ Risk contracting approach. The projects will be constructed concurrently by a single CM @ Risk firm. The Pedestrian Underpass project involves raising the roadway profile approximately 6 feet so that a pedestrian underpass may be constructed below the roadway. The project will include the pedestrian underpass structure and associated retaining walls and the reconstruction of approximately 1000 feet of Camelback Road. The typical roadway section is three lanes in each direction of travel.

The Core Pedestrian Enhancement project will provide for the enhancement of 24<sup>th</sup> Street and 20<sup>th</sup> Street with Camelback Road intersections to make the area safer for pedestrian activity.

These projects are very similar to the Gulf Boulevard project, in that they include roadway construction, sidewalks, medians, storm drainage, sanitary sewer, water lines and under ground telephone, electric and television. Construction is anticipated to begin on this \$4 million project during the spring of 2006.

For additional information regarding the City of Phoenix's CM @ Risk program, contact Wylie Bearup, P.E., City Engineer at 602-495-7274

### **Sanibel Causeway, Lee County, FL**

Lee County, Florida is in the process of building the \$103 million 3-mile Sanibel Causeway which crosses San Carlos Bay using the CM @ Risk delivery method. The project consists of one bascule bridge and two low level bridges as well as two causeway islands, the associated roadway construction and toll facilities at both the Sanibel and Cape Coral bridges. The project is funded by the sale of bonds that are secured by the projected toll revenues.

Lee County has benefited by the use of the CM @ Risk delivery method in several areas. Because the CM was able to pre-qualify subcontractors and then negotiate construction costs, the County not only was able to get the best subcontractors on the project, they were able to get very fair pricing. Additionally, the CM @ Risk maintained overall control of the schedule. This saved the county substantial money. For example, the plans called for bridge "B" to be constructed first. To get to bridge "B", you have to pass over bridge "A". However, the load limit on bridge "A" was reduced to 17 tons, thus preventing a concrete truck from passing over bridge "A". Therefore the concrete used on bridge "B" would have to be barged out to the

bridge. The CM @ Risk negotiated with the bridge subcontractor and by allowing that subcontractor to begin bridge “A” out of sequence, the subcontractor will be able to County saved \$1.5 million in barging costs.

Another cost savings came from the value engineering and constructability reviews used both during design and construction. Because the CM @ Risk has overall control of the subcontractors, they are performing both VE studies and constructability reviews on an ongoing basis.

Additionally, Hurricanes Charley and Jeanne hit the bridge site last year. The CM @ Risk was able to utilize his subcontractors to provide emergency “first-push” clearing of the roadways for Lee County.

For additional information on this project contact Paul Wingard, PE; Deputy Director; Lee Co DOT at 239-479-8545.

### **Greenfield Road Improvements, Town of Gilbert, AZ**

This \$19 million project utilizing CM @ Risk included the construction of approximately 1.9 miles of new six lane roadway on Greenfield Road, the construction of 0.9 miles of a four lane connector roadway, and the reconstruction of 0.5 miles of Williams Field Road. The work included water lines, storm drainage, sanitary sewer lines, reclaimed water lines, traffic signals and roadway lighting.

The Town of Gilbert benefited by using the CM @ Risk contracting method throughout both the design and construction process. Prior to construction, the CM @ Risk thoroughly evaluated the plans and performed their own site investigations. They looked at dig-ability and shoring issues, as well as utility conflicts. Once the CM @ Risk was satisfied with the underground conditions, they essentially waived their ability to file claims for underground conflicts. The Town then was able to reap the benefits of construction costs that were based on actual information.

Another advantage to the Town was that all subcontractors were prequalified by the CM @ Risk and factors such as; scheduling, approach to public involvement, quality expectations, trust and past experience were critical in the selection process.

The CM @ Risk contract provided for an “open-book” unit price approach. This proved to be a big cost savings. For example, three other Arizona DOT projects were underway adjacent to the Greenfield Road project. One project involved realigning a railroad bridge and changing the alignment of Greenfield Road at the north end of the project. This ADOT contractor was being impacted by the Town’s project and filed a delay claim. The CM @ Risk was able to re-sequence his work and finished the north end of the project 45 days ahead of schedule. Because the CM @ Risk had both control over the project and a very good working relationship with the Town, the only cost to the Town of Gilbert was the additional traffic control devices.

Another cost savings came at the south end of the project. The ADOT contractor working there needed fill, the Greenfield Road project had excess fill. The CM @ Risk was able to negotiate with the ADOT contractor to take the excess fill and the savings was passed along to the Town.

For information on this project contact Daniel Spitz, P.E., Vice President, Director of Special Projects, Achen-Gardner Engineering, 480-940-1300

### **Germann Road Improvements, City of Chandler, AZ**

In 1995 the City of Chandler planned on widening Germann Road from a two lane rural roadway to a four lane roadway with raised medians. Due to budget issues the project was shelved at 30%. In 2003 due to heavy development and the extension of an Arizona freeway, the project was resurrected. The city solicited for a CM @ risk in October 2003, gave the CM verbal intent to award in November and a Notice to Proceed in February 2004. Construction began in June of 2004 and was complete in June of 2005.

Overall this project is very similar very similar to the Gulf Boulevard project. This \$15 million project included the reconstruction and realignment of 2.25 miles of Germann Road and the construction of a new storm drainage system, sanitary sewer lines, reclaimed water lines, traffic signals, lighting and landscaping. Additionally, four miles of 36 inch diameter water transmission lines were installed as were underground utilities and natural gas lines.

By using CM @ Risk, the City of Chandler was able to begin the construction process with 30% plans, and while the engineer was completing the plans, the CM @ Risk was preparing for construction so that when construction began, there were no delays. Because so many underground utilities were involved, the CM @ risk was able to control the schedule and sequence of work, maximize production rates, and avoid delays.

For additional information on this project contact Paula Brown, Public Works Contract Administrator, 480-782-3308.

### **Uptown Enhancement Project, Sedona, AZ**

Sedona Arizona recently awarded a CM @ Risk contract for the Uptown Enhancement Project. The \$4 million 0.75-mile project includes new sidewalks, realigned parking spaces, storm drainage, and water lines. This project is in the early stages, and a GMP is expected in October, 2005.

### **FDOT I-75 Florida Welcome Center, Jennings, FL**

This \$13.5 million CM @ Risk project was constructed by the Florida Department of Transportation. About 50% of the work was site and civil work, including; 2-miles of sanitary sewer force mains, lift stations, potable water lines, on and off ramps and parking areas. Additionally a 19,000 square-foot building was constructed. This project was substantially complete in July 2005.

**FDOT I-10 Rest Area, Madison County, FL**

This \$8 million project included new on and off ramps to I-10, site work, new sewage treatment and water treatment facilities, and renovations to the existing rest area building. The project is scheduled for completion in September 2005.



## Purpose

The proposed CM @ Risk method is an innovative process, which has been approved by both the Pinellas County and the State of Florida. Gulf Boulevard is a complex project and this approach will result in better overall coordination between the State, the County, the two communities involved, the three utility companies, and the three designers. This approach will provide for more efficient project scheduling which will result in an overall best value, wherein *value* is based on more than just *cost*. The impact to the beach communities involved has to be taken into consideration and by utilizing CM @ Risk, the expertise of a professional Construction Manager can be utilized to efficiently manage the multiple subcontractors and coordinate the work of the utility companies.

By utilizing the CM @ Risk method of contracting, the CM holds the risk of selecting the trade subcontractors and guaranteeing completion of the project for a negotiated price commonly called a Guaranteed Maximum Price (GMP). However, unlike the traditional “low-bid” approach to contracting, the CM provides professional advice to the Owner including, schedule, budget and constructability advice. This approach gives the Owner the opportunity to incorporate the professional construction manager’s perspective into the early phases of the project. In fact, the professional designation *Certified Construction Manager* (CCM) is now being called out in specifications as a requirement for the project manager on many CM @ Risk projects.<sup>4</sup>

Indian Shores and Indian Rocks Beach are narrow barrier island communities and Gulf Boulevard is the **only** north-south roadway through the towns. As such, maintenance of traffic and utility coordination is a critical aspect of the Project. For the majority of the project, the right-of-way is only 40-foot wide. Within this limited right-of-way, the roadway and all underground utilities will be rebuilt. Both sides of the roadway are completely lined with single family homes, apartments, condominiums and various businesses. A major portion of the potable water and sanitary sewer systems will be rebuilt to accommodate the roadway drainage system. The CM @ Risk will provide additional insight into the phasing of this construction, which in turn will limit service disruption. The CM @ Risk will take into account the unique nature of working on a barrier island. During the tourist season, the population of these barrier islands swells by 40%. The CM @ Risk will take into consideration this impact of both pedestrians and motorists when scheduling and phasing the construction activities. Pedestrian access throughout the project site is critical. The typical tourist reroute to the beach will be passing through the construction site in bare feet or sandals. The CM @ Risk will coordinate the provision of safe access through the construction site. Additionally, boat owners use Gulf Boulevard to gain access to the boat ramps along the intra-costal water way. Cars and pickup trucks hauling boat trailers through the construction site present even more reason to rely on the expertise of a CM @ Risk when planning the sequence of the construction activities.

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<sup>4</sup> CMAA, Capstone, the History of Construction Management, Practice and Procedures, 2003 McLean, Virginia 23 -25.

Also, power, telephone and television utilities will be buried as part of the project. Here again, the CM @ Risk can coordinate this work such that the residents and businesses are never without these critical utilities.

It is very obvious that emergency preparedness and hurricane evacuation is an area of critical concern. Indian Shores and Indian Rocks Beach are both Gulf-front communities and at risk to severe damage from both wind and flooding associated with hurricanes. Working with the local police and fire department, the CM @ Risk will coordinate emergency access throughout the project at all times. In fact the Indian Rocks Beach Fire Department has a facility adjacent to the project limits. The CM @ Risk will host regular meetings with this the Officer-in-Charge of this unit to keep them informed of the construction progress and its impact on traffic conditions. Additionally, in the event of a hurricane, the CM @ Risk will coordinate with Pinellas County Emergency Operations Center to provide efficient evacuation routes out of these Gulf-front communities.

## **CM @ Risk Selection Process**

On February 15, 2005 Pinellas County Board of County Commissioners issued a Public Announcement seeking Statements of Qualifications from qualified firms to provide Construction Management at Risk Services for the reconstruction of State Road 699 (Gulf Blvd.) from Park Boulevard to Walsingham Road, construction of a new reclaimed water transmission main, realignment of several existing water and sewer facilities, and the coordination of the undergrounding of power, cable and telephone utilities. The Public Announcement provided information on how to obtain technical and procedural information regarding the project, and set the deadline for submittals as 4:00 p.m., March 2, 2005.

The Public Announcement required that the firm submit a Statement of Qualifications which includes the following:

1. Letter of Interest
2. Project Specific Statement of Qualifications Standard Form, SF 330
3. References for the proposed Project Manager
4. A description as to how the firm plans to approach the project including, management of the work, coordination of the roadway improvements and utility construction, and working with the engineer, etc
5. Current project workload of the firm for the office performing the work
6. Proof of the firm's certification as Minority Business Enterprise, if applicable
7. Evidence of the ability to meet the bonding requirements for the project
8. Copy of the firm's State of Florida Board of Professional Engineers Certificate of Authorization

Evaluation of each submittal was based upon the following criteria:

1. The capabilities and adequacy of the firm's proposed staff or subconsultant to be assigned to the project
2. Firm's recent relevant experience on projects comparable to this project including past joint FDOT and utility projects
3. Evaluation of the firm's past County performance or performance with other agencies based on references from firm's clients
4. The firm's size, financial resource business ability relative to the Project's scope
5. Location and ability to handle workload
6. Minority Business Enterprise Certification, if applicable

Following a review of the submittals by the Selection Committee, three firms were scheduled to make an oral presentation and interview on April 8, 2005. The Selection Committee included an FDOT representative. At the interview each firm was asked to present the following:

1. An organizational diagram
2. The firm's overall relevant experience and the individual team member's experience
3. Propose a general outline of services the firm would recommend to be performed
4. Address any project issues that would demonstrate the firm's understanding of the project needs and the firm's ability to manage the project
5. Provide a schedule for the proposed services

6. Address the firm's current workload and ability to meet project deadlines

Upon completion of the interviews, County staff and the Selection Advisory Committee, including an FDOT representative, carefully reviewed all applicants and recommended a ranking that was submitted to the Board of County Commissioners for approval. The ranking was strongly based on the qualifications of the firm's project manager and the experience of the firm in the transportation/roadway and drainage, and utility pipeline installation construction as opposed to the construction of water/wastewater treatment facilities, commercial buildings, or other types of construction projects.

The contract between the CM @ Risk and Pinellas County will bind the CM @ Risk to all provisions of Form FHWA 1273 "Required Contract Provisions Federal-Aid Construction Contracts", as well as all provisions in the FDOT's "Local Agency Program Manual for Federal Aid Projects".

## CM @ Risk Scope

Although the Project is essentially designed, the CM @ Risk will evaluate and comment on the Construction Documents developed by the engineers. The appraisal shall include reviewing those various documents for value engineering and constructability. The CM @ Risk shall attend all scheduled conferences and to otherwise assist and cooperate with the Engineers with respect to the design of the Project. Especially important is the analysis of the Traffic Control Plans we the goal to reduce the construction duration. In general the Pre-Construction Phase services will include:

- Preparation of a detailed cost estimate
- Providing for construction coordination and phasing
- Providing alternate designs
- Providing constructability reviews
- Providing value engineering studies
- Assistance with Public Relations

Upon completion of the Pre-Construction phase, the CM @ Risk and Pinellas County will negotiate a GMP based on the completed design. Once construction begins, the CM @ Risk shall take on the responsibility of selecting subcontractors for all major items of work. The CM @ Risk shall divide the work into packages that take the most advantage of the efficiencies and skills of the local subcontractor market.

Due to the complexities of this Project, in accordance with **Florida Statute § 337.025**, subcontractors will be selected based on their overall approach to working within a Guaranteed Maximum Price environment and their approach to resolving project issues. Additionally, their past experience on similar projects in Pinellas County will be evaluated. Construction duration and disruption of the beach communities are critical issues and the subcontractor's previous history in successfully completing similar projects will be a critical factor in their selection.

Federal procurement law supports this subcontractor selection proposal. Specifically, federal procurement regulations contemplate that a prime contractor may select its subcontractors based on factors other than lowest price. For example, the Department of Defense Federal Acquisition Regulation Supplement ("DFARS") instructs contracting officers responsible for providing consent to subcontracts to consider, among other factors, whether the contractor adequately substantiated the selection as offering the greatest value to the Government *if the selection was based on other than lower price*. **DFARS 244.202-2; see also DFARS 215.404-3(a)(v)** (enumerating certain subcontract pricing considerations and providing that "[i]f the selection of the subcontractor is based on a trade-off among cost or price and other non-cost factors rather than lowest price, the analysis supporting subcontractor selection should include a discussion of the factors considered in the selection . . . .") (Emphasis added). Likewise **Florida Statute § 337.025** provides for "...innovative techniques of highway construction, maintenance, and finance which have the intended effect of controlling time and cost increases..." Additionally the statute allows "...innovative bidding..." and specifies that the Department is "...not required to adhere to those provisions of the law that would prevent the FDOT from using the innovative

technique...” All subcontractor costs will be validated using historical cost data, along with the FDOT’s design engineer’s estimate and the CM @ Risk’s cost estimate.

The CM @ Risk shall also provide a Performance and Payment Bonds as called for in the appropriate Contract Documents. Overall project safety will be the responsibility of the CM @ Risk, as will compliance with all permits. Coordination between the State, County, towns, utility companies, multiple subcontractors and residents and businesses will be one of the most important roles of the CM at Risk during the construction phase.

Public Relations and keeping the residents and business owners informed of the project status will be a critical function of the CM @ Risk. The project is lined with hundreds of driveway openings, and during certain construction activities, driveways will have to be temporarily closed requiring the CM @ Risk to coordinate this work very closely with the effected property owner. Efficient maintenance of traffic is critical to these small businesses which depend on easy access to their business from Gulf Boulevard. The CM @ Risk will coordinate the work so that the impact is as limited as possible.

The CM @ Risk will provide a Contractor’s Quality Assurance Plan using the FDOT’s Construction Project Administration Manual. Additionally, the CM @ Risk will meet the all requirements contained in the FDOT’s Local Agency Program Agreement.

## **Measures and Reporting**

The performance measures used to evaluate this project are based on:

- Overall price comparison between the CM @ Risk and similar projects using design-bid-build delivery methods
- Schedule comparison between the CM @ Risk and similar projects using design-bid-build delivery methods
- Quality comparison between the CM @ Risk and similar design-bid-build delivery methods, to the extent that quantitative measurements are available.
- Degree of innovation, including increased constructability or value engineering, that resulted from the CM @ Risk method in comparison with similar design-bid-build delivery method.
- Level of cooperation between the multiple utility companies, both public and private, and the CM @ Risk compared to similar cooperation on similar design-bid-build projects
- Public perception and response to the project as a result of the CM @ Risk delivery method as compared to similar design-bid-build projects

An initial report will be prepared for the Gulf Boulevard project when the CM @ Risk is brought under contract. A copy of the GMP will be submitted when negotiated. Interim construction reports will be prepared at six month intervals during the construction phase. A final report will be submitted upon the completion of the project and will discuss the overall evaluation of the successes and areas of concern.

## Lessons Learned

1. Contractors that are not familiar with Department of Transportation specifications have been involved with previous CM @ Risk projects.
  - a. All sub-contractors will be pre-qualified by both Pinellas County and the Florida Department of Transportation.
  - b. All subcontractors working on FDOT items will be required to employ on the project a Quality Control Manager.
2. Many times utility conflicts create a great deal of problems on a project.
  - a. Currently a “third-party” contractor is installing the underground utilities under direct contract with Progress Energy. The CM @ Risk is charged with coordinating this work; however, a contractual relationship does not exist between the utility contractor and the CM @ Risk.
  - b. The CM @ Risk is talking with Progress Energy and if negotiations succeed, the CM @ Risk will take over the utility installations for Indian Shores throughout the project.
  - c. This will give the CM @ Risk control over the coordination of the utility work and reduce the impact to the construction schedule.
3. Problems have occurred when the contractor was not familiar with NPDES requirements.
  - a. All subcontractors will be required to employ at least one Stormwater, Erosion and Sedimentation Control Inspector to monitor erosion control on the project.
4. Out of Scope Work, problems have occurred on previous projects when claims were filed because it was unclear if extra work was “out of scope” or within the original “intent of the plans”.
  - a. Prior to the submission of the GMP a “Plan-in-Hand” walk through will take place so that all parties understand the intent of the plans, so that as extra work arises, it can be determined if it is “out of scope work” or within the “intent of the plans”.
5. Problems existed in the past when the scope of work was not clearly defined.
  - a. There were several engineering firms responsible for the design of different sections of this project
  - b. In conjunction with each Engineer of Record, a special pre-construction will be held so that the project can be accurately and completely reviewed.
6. Unrealistic expectations as to contract duration have caused problems on past projects.
  - a. All subcontractors will be involved with the development of the overall schedule.
  - b. Maintenance of Traffic will be the controlling factor regarding project duration. Therefore, the CM @ Risk will host a specific scheduling meeting with the various sub-contractors, Pinellas County and representatives from Indian Rocks Beach and Indian Shores.



7. Disruption to local businesses and residents has caused problems on past projects.
  - a. Business and residents deserve accurate up to date information regarding the construction activities that impact them. Therefore, public meetings will be hosted in conjunction with the Towns of Indian Shores and Indian Rocks Beach.
  - b. "Green Vests" who are Pinellas County employees and act as "Public Awareness Ambassadors" will be on site.
  - c. A Public Involvement Program will be instituted that includes; neighborhood outreach, media relations, printed materials, mailings, and local government coordination.
  
8. Problems have existed on projects when the organization structure was not clear from the beginning.
  - a. An overall Project Organizational Chart will be established from the onset of the project.
  
9. Mutual respect and trust is sometimes missing on projects.
  - a. Partnering meetings will be held with all stakeholders prior to the start of construction. It has been shown that partnering is very important on CM @ Risk projects since selection is based on factors other than "low-bid". Only through mutual trust can that philosophy be continued throughout the duration of the project.
  - b. Senior members of each agency and company have embraced this concept.
  - c. Sessions will be updated throughout the project.
  
10. Lack of open communications has caused problems on past projects
  - a. follow up all phone calls with written correspondence
  - b. Develop a master correspondence list so that all players are kept informed
  - c. Document all changes in writing

## **Local Agency Program Construction Oversight**

This Oversight Plan is an evolving document to be updated as policies and procedures change at the Federal, State and County level. The document will serve a twofold purpose. The first will be to provide information that will be assessed, as applicable to the project, during each review. The second is to provide a template for the reviewer to follow and comment on during each review.

Quality Control inspections will be performed by the subcontractors on the project level operations on a defined periodic basis as determined by the Contract Documents or as required by performance or specific problem areas.

Quality Assurance and Oversight inspections will be performed by CM @ Risk on a defined periodic basis determined FHWA, State and County requirements or as required by performance or specific problem areas. These inspections will be conducted for the general purposes outlined below:

1. To assess the level that the construction contracts are administered in conformance with the requirements established by FDOT and Pinellas County procedures.
2. To assess the level to which project inspection is performed in accordance with specifications, special provisions, plans, procedures and informational or directional memoranda.
3. To see that changes deemed necessary, based on the findings of reviews, are implemented.

In conjunction with the quality assurance inspections, reviews of the Final Estimate will be conducted pursuant to the requirements of the FDOT Procedural and Documentation Manual and the FDOT Final Estimates Review and Administration Manual. The CM @ Risk will follow up on any discrepancies found until issues are resolved.

Pinellas County will provide day-to-day oversight on the project. The FDOT will provide a higher level of oversight on the project. Additionally, the CM @ Risk will be required to have an FDOT approved Contractor Quality Control Manager on site.

General Oversight Responsibilities include:

1. Pinellas County will send to the FDOT Construction Project Coordinator (FCPC) a copy of the approved (previously by FDOT Production (PS&E)) Plans, Specifications, and Estimate.
2. Pinellas County will be responsible for pre-qualification and selection of the Construction Manager @ Risk.
3. The CM @ Risk will be required to select sub-contractors that are on both the Pinellas County Pre-Qualified Contractors List and the Department's Pre-Qualified Contractors List.
4. Pinellas County will forward an "intent to award letter" to the District LAP Administrator for concurrence, prior to actual award of the CM @ Risk contract.
5. Pinellas County will notify the FCPC when and where the Pre-construction conference is to be held.
6. The FCPC shall attend or send an appropriate delegate to the Pre-construction conference.
7. The FCPC will provide concurrence on the approval of the Contractor's Quality Assurance Plan using CPAM section 5.8 and the contract specifications as supporting documentation.
8. The FCPC will review and approve all Supplemental Agreements.
9. The FCPC will conduct quarterly Consultant Construction Engineering Evaluations in accordance with CPAM Chapter 4.
10. The FCPC will process invoices and conduct periodic field and administrative reviews using the CPAM Inspection Guidelines and Critical Requirements as a guide (see CPAM section 5.9). FCPC shall coordinate their periodic field reviews with the FHWA Transportation Engineer in a timely manner.
11. The FCPC will periodically attend project meetings.
12. The FCPC will request an update on the project monthly.
13. The FCPC, in coordination with Pinellas County and other appropriate parties, will conduct the final project inspection and review the final invoice prior to processing and approval by the District LAP Administrator. Project closeout will then occur.

Throughout the duration of the project, the FDOT and Pinellas County will each assign a Project Manager to oversee the activities of the CM @ Risk. The FDOT's representative will be Ron Chin, PE and Pinellas County's representative will be Dennis Simpson, PE.

## General Oversight Responsibility Matrix

Item	Description	Pinellas Co.	FDOT
1	Participation in Pre-Construction conference	X	X
2	Participation in weekly project coordination meetings	X	
3	Participation in monthly project update meetings	X	X
4	Participation in special or Public Involvement meetings	X	
5	Providing periodic updates to FHWA		X
6	Review of monthly pay estimates	X	X
7	Review the monthly progress reports	X	X
8	Review of Contractor Quality Control Plan	X	X
9	Coordinate the Designers' of Record work	X	X
10	Participate in review of re-designs with the Engineer of Record	X	X
11	Provide periodic review of all project DBE requirements		X
12	Review compliance with Pinellas County guidelines	X	
13	Review compliance with FDOT guidelines		X
14	Evaluating the need for additional "out of scope" work	X	
15	Participate in review of change orders	X	X
16	Participate in weekly job site inspections	X	
17	Participate in monthly job site inspections		X
18	Monitor DBE participation on the project		X
19	Participate in Substantial Completion inspection	X	
20	Participate in Final Completion inspection	X	X

## Proposed Schedule

### Approximate CM @ Risk Selection and Construction Schedule

- Advertise for CM at Risk Services February 15, 2005
- Receive CM at Risk Statements of Qualifications March 2, 2005
- Oral Presentations April 8, 2005
- Selection Advisory Committee Meeting April 19, 2005
- Enter in contract with CM at Risk June 1, 2006
- Establishment of GMP August 1, 2006
- Construction begins March 6, 2006
- Substantial Completion (based on Engineer's estimate) March 6, 2009

## Appendix

Resumes of FODT and Pinellas County's Project Managers

*Dennis M. Simpson, P.E.*  
*Pinellas County Utilities*  
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### EXPERIENCE SUMMARY

Twenty years of comprehensive technical, management and supervision experience as an engineer. Experience includes responsibility for planning, design and construction of Public Works and Utility projects.

### EDUCATION

BS, Civil Engineering,  
University of South Florida, April 1984

Project Managers Boot Camp I and II, Pinellas County Utilities  
Clearwater, Florida, May 2004, PSMJ Resources, Inc.

### RELEVANT PROFESSIONAL EXPERIENCE

#### Senior Engineer

Responsible for managing a staff of four in FDOT and Pinellas County Public Works (PCPW) utility relocation projects from inception, design, bidding, construction and completion. Estimated at over \$15 million.

- Responsible for hiring and managing design consultants and contractors for the new reclaimed water infrastructure in the South County Beach Communities and the City of Seminole. Estimated construction costs exceed \$70 million.
- South Gulf Beach Reclaimed Water Transmission main was the world longest Horizontal Directional Drill (HDD) in an urban environment in 2001.
- Worked with the beach communities to develop a relationship conducive to educating the residents and business owners in HDD, which impacted their lives for eighteen months.

#### Engineering Supervisor

Project Manager for Sewer and Water Utility projects in conjunction with PCPW's roadway and drainage improvement projects.

- Responsible for design of the sewer relocation design projects in conjunction with FDOT and PCPW roadway and drainage projects.

### **Public Works Engineering Specialist II**

Project Manager for major and minor roadway, drainage and bridge projects.

- Managed the PCPW Preliminary Design Study for County Road 296 from Hamlin Blvd to I-275 (11 miles).
- Manager the final design and construction of Phase I, 102<sup>nd</sup> Avenue bridges (Lake Seminole and Bypass Canal Bridges), roadway and drainage from Seminole Blvd to Starkey Road. Estimated at over \$18 million.
- Managed the FDOT Preliminary Engineering Study for SR 586 from Alt. US 19 to the railroad tracks in Oldsmar.

### **Public Works Engineering Specialist I**

Design waterline relocation in conjunction with FDOT and PCPW roadway, drainage and bridges. Review site plans for compliance to the Pinellas County Water Department guidelines.

### **PROFESSIONAL CERTIFICATIONS**

Florida Professional Engineer, P.E. 44143

### **PAPERS AND PRESENTATIONS**

“Lessons learned from the design, the construction and post construction of 10 miles of 24-inch HDPE Transmission Main by HDD.”

Presented at the North American Society for Trenchless Technology, Orlando, Florida, April 2005.