



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
CONSTRUCTION PROJECT AGREEMENT
BETWEEN OWNER AND CONTRACTOR

FDACS PROJECT NO:
SOLICITATION NO:

XXXX
ITB/GS-21-22-XX

STATE FLAIR CODE:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Org Code XXXXXXXXXXXX XX
Category XXXXXXXX Year 2021-22

PROJECT NAME AND LOCATION:

[PROJECT NAME]
[STREET ADDRESS]
[CITY, STATE, ZIP CODE]

CONTRACTOR:

[CORPORATION NAME]
[STREET ADDRESS]
[CITY, STATE, ZIP CODE]

ARCHITECT-ENGINEER:

[CORPORATION NAME]
[STREET ADDRESS]
[CITY, STATE, ZIP CODE]

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**CONSTRUCTION PROJECT AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT for Construction Services is made and entered into this _____ day of _____ in the year Two Thousand Twenty One (2021), by and between The Florida Department of Agriculture and Consumer Services, hereinafter called the Owner, and

[CORPORATION NAME]
[STREET ADDRESS]
[CITY, STATE, ZIP CODE]

FEDERAL TAX I.D. NUMBER: [NUMBER]

hereinafter called the Contractor.

ARTICLE 1: THE PROJECT TEAM AND EXTENT OF AGREEMENT

The Contractor accepts the relationship of trust and confidence established with the Owner by this Agreement, covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. The Contractor agrees to furnish efficient business administration and superintendence, and to use its best efforts to complete the Project in the most sound, expeditious and economical manner consistent with the interest of the Owner.

1.1 THE PROJECT TEAM

The Contractor, the Owner and the Architect-Engineer, called the "Project Team", shall work jointly through final construction completion and shall be available thereafter should additional services be required. The Architect-Engineer and/or Owner will provide leadership on technical matters relating to design and the Contractor shall provide leadership to the Project Team on all matters relating to construction with support from the Owner.

The specific representatives of the Project Team are shown in **Exhibit A** attached.

1.2 EXTENT OF AGREEMENT

This Agreement is for the completion of the **[Project Name]** entered into between the Owner and the Contractor, and supersedes any prior negotiations, representations or agreements. The Construction Project Agreement shall consist of this Agreement and all exhibits hereto; general terms and conditions; special conditions, if any; the bid solicitation documents; the bid proposal submitted by the Contractor with post-bid modifications, if any; the Construction documents, drawings and specifications; any amendments or addenda executed hereafter; Owner-approved change orders; and other descriptive documents defining the work upon which the bid is based, if any. The Agreement shall be signed by the Owner and Contractor, acknowledging all requirements herein.

This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both Owner and Contractor.

1.3 DEFINITIONS

Architect-Engineer – The Architect-Engineer shall be the Owner’s designated representative for all design and technical matters, whom will issue instructions to the Contractor and will assist in administering of the Construction Project Agreement. The Architect-Engineer’s interpretations and decisions shall be final regarding the Construction Documents. In the absence of an Architect-Engineer, the Owner will solely administer this Agreement and deal directly with the Contractor.

Contractor - The Contractor, responsible for the Project, shall be the single point of interface for all work trades and subcontractors for the duration of the Project. For the purposes hereunder, the Contractor (including its employees, contractors, subcontractors, etc.) is an independent contractor, and is not and shall not by its performance hereunder be deemed or construed under any circumstance to be, an employee, agent, representative, or servant of the Owner or the State of Florida.

Notice To Proceed – The term Notice To Proceed shall mean a written work order based on a defined scope of work, prepared by the Project Manager and issued to the Contractor. The Notice To Proceed shall be issued upon or after the execution date of the Construction Project Agreement and all work performed pursuant to the Notice To Proceed shall be included in the bid.

Owner - The State of Florida, Department of Agriculture and Consumer Services, acting through its Commissioner or those persons designated by the Commissioner to act in its behalf. The entity that will occupy, use and own the project upon substantial completion is the Owner. The funds with which the compensation for work performed in connection with the Project will be paid are under the control of the Owner, based on approval of each payment by The Division of Administration, Florida Department of Agriculture and Consumer Services. All duties of the Owner hereinafter shall be performed by The Florida Department of Agriculture and Consumer Services.

Owner's Representatives - The Project Manager and their superiors or designees.

Permitting Authority - The local authority with jurisdiction over the area in which the project is located.

Project - The Project is the total and sum of all work to be performed by the Contractor and its subcontractors under this Agreement. The Project consists of all permitting, construction services and work, and code inspections necessary to fully complete the [Project Name] as contemplated in the Construction Contract Price identified in **Exhibit B**.

Project Manager - The person designated by the Owner to provide direct interface with the Contractor with respect to the Owner's responsibilities. (See **Exhibit A**)

ARTICLE 2: CONTRACTOR'S SCOPE OF WORK

The Contractor is responsible for fully and satisfactorily completing the Project, which shall include, but is not limited to, those services described or specified herein. The services described or specified shall not be deemed to constitute an exhaustive specification with the intended purpose or effect of excluding services or responsibilities not specifically mentioned. The Owner and Contractor acknowledge and agree that the Owner is contracting with the Contractor to perform or cause to be performed all work and services necessary to complete the Project.

2.1 GENERAL

The Contractor represents and warrants that it has thoroughly reviewed the Construction Documents for the Project and all other documents related thereto made available by the Owner and/or Architect-Engineer; visited and thoroughly inspected the project site and familiarized itself with local conditions under which the project will be constructed and operated; familiarized itself with surveys or other as-built drawings that indicate the location of existing buildings, streets, utilities, equipment, components, conditions and other attributes having or likely to have an impact on the Project; familiarized itself with pertinent project dates, the Project schedule and any special requirements; and gathered any other information necessary for a thorough understanding of the Project.

If the Project involves modifications to any existing structure(s) on the project site, the Contractor represents that it has also reviewed all plans, specifications, record drawings and as-builts; and has thoroughly inspected existing conditions at the project site to identify any deficiencies. Claims by the Contractor resulting from the Contractor's failure to familiarize itself with the project site or pertinent documents shall be deemed waived.

2.2 CONSTRUCTION

2.2.1 Contractor's Staff

The Contractor shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Contractor to coordinate, inspect and provide general direction of the work and progress of the subcontractors and shall provide no less than those personnel during construction that are set forth in **Exhibit C** to this agreement. The Contractor shall not change any of those persons named in **Exhibit C** unless mutually agreed to by the Owner and Contractor. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld. The Owner also retains the right to review the need and effectiveness of any employee or employees assigned by the Contractor, should the Project Manager question the need for the employee or employees.

The Contractor shall supervise and direct work at the project site. The Contractor shall, at a minimum, staff the project with personnel who shall:

- (1) supervise and coordinate the Contractor's personnel and act as its primary liaison with the Owner and Architect-Engineer;
- (2) coordinate trade contractors and suppliers, and supervise site construction services;
- (3) be familiar with all trade divisions and trade contractor's scopes of work, all applicable building codes, and the Construction Project Agreement;
- (4) check, review and coordinate shop drawings and materials delivered to the site, regularly review the Work to determine its compliance with the Construction Project Agreement, periodically confer with the Architect-Engineer and Owner to assure acceptable levels of quality;
- (5) prepare and maintain Project records, including process documents;
- (6) schedule and conduct weekly progress meetings with subcontractors to review such matters as jobsite safety, job procedures, schedule, construction progress, shop drawing status, and other information as necessary;
- (7) schedule and conduct bi-weekly or monthly progress meetings with the Owner and Architect-Engineer to review such matters as construction progress, schedule and other information as necessary;
- (8) make provision for Project security to protect the project site and materials stored off-site against theft, vandalism, fire and accidents.

2.2.2 Lines of Authority

The Contractor shall establish and maintain lines of authority for their personnel, and shall provide this definition to the Owner and all other affected parties such as the code inspectors of the Permitting Authority, the sub-contractors, the Architect-Engineer and the Owner's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The Owner and Architect-Engineer may attend meetings between the Contractor and their subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Contractor to administer the subcontractor.

2.2.3 Schedule Provisions

The Contractor shall provide subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the Project schedule developed and updated monthly as required; expanded for the construction period, employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to subcontractors and suppliers. The Contractor shall also continue to provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the work to the work of their subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. They shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond their control. They shall hold job-

site meetings at least once each month with the Project Team and at least once each week with the subcontractors, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

The Contractor shall cause its subcontractors and suppliers to comply with the Project schedule and applicable sub-schedules. The contractor shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the overall Project schedule, and enforce compliance with all applicable schedules to ensure timely completion of the work. If at any time the Project is delayed, the Contractor shall immediately notify the Owner of the probable cause(s) and possible alternatives, and make recommendations to minimize expense and/or delay to the Owner.

2.2.4 Bonds

In accordance with the provisions of Section 255.05, Florida Statutes, the Contractor shall provide to the Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond each in an amount not less than the total construction cost as defined in Article 7 and inclusive of the Contractor's fees.

To be acceptable to the Owner as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

- (1) The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Financial Services, Office of Insurance Regulation, 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) If the Contract Award Amount exceeds \$500,000, 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.

CONTRACT AMOUNT			POLICY HOLDER'S RATING	REQUIRED FINANCIAL RATING
\$500,000	TO	\$1,000,000	A-	CLASS I
\$1,000,000	TO	\$2,000,000	A-	CLASS II
\$2,000,000	TO	\$5,000,000	A-	CLASS III
\$5,000,000	TO	\$10,000,000	A-	CLASS IV
\$10,000,000	TO	\$25,000,000	A-	CLASS V
\$25,000,000	TO	\$50,000,000	A-	CLASS VI
\$50,000,000	TO	\$100,000,000	A-	CLASS VII

- (B) The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policyholders, provided:
 - 1. Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Financial Services, Office of Insurance Regulation to do business in this state have been met.

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

2.2.5 Quality Control

The Contractor shall develop and maintain a program, acceptable to the Owner and Architect-Engineer, to assure quality control of the construction. They shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and shall continue to exert their 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. The Contractor shall promptly reject any work: which does not conform to the Construction Documents; or which does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency of which it is aware. Should disagreement occur between the Contractor, the Owner or the Architect-Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

2.2.6 Subcontractor Interfacing

The Contractor shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer. The Contractor shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Architect-Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, a written authorization from the Owner must be issued. However, when health and safety are threatened, the Contractor shall act immediately to remove the threat to health and safety. They shall also carefully review all shop drawings and then forward the same to the Architect-Engineer for review and actions. The Architect-Engineer will transmit them back to the Contractor who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Contractor shall maintain a suspense control system to promote expeditious handling. They shall request the Architect-Engineer to make interpretations of the drawings or specifications requested by the subcontractors and shall maintain a suspense control system to promote timely response. The Contractor shall advise the Project Manager and Architect-Engineer when timely response is not occurring on any of the above.

2.2.7 Permits

The Contractor shall secure all necessary building permits from the Permitting Authority and all necessary utility connection permits, the cost of which will be considered a direct cost item.

2.2.8 Job Site Requirements

- (1) The Contractor shall provide for each of the following activities as a part of the contract price:
 - (A) Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
 - (B) Maintain a roster of companies on the project with names and telephone numbers of key personnel.
 - (C) Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 - (D) Provide labor relations management for a harmonious, productive project.
 - (E) Provide a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
 - (F) Provide a quality control program as developed under Article 2.2.5 hereinabove.

- (2) The Contractor shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:
 - (A) Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
 - (B) The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.

2.2.9 Job Site Administration

The Contractor shall provide as part of their contract price, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:

- (1) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering including delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements. In addition, regular project status meetings will be held between the Architect-Engineer, Owner and Contractor either biweekly or monthly, whichever is designated by the Project Manager.

Use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.

Identify party or parties responsible for follow-up on any problems, delay items or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.
- (2) Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Architect-Engineer of such drawings for action, and closely monitor their submittal and approval process.
- (3) Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors.
- (4) Payments to subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.
- (5) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer.
- (6) Reports and Project Site Documents - Record the progress of the project. Submit monthly written progress reports to the Owner and the Architect-Engineer summarizing the progress of the Project, including: information on the subcontractor's work; the percentage of completion; schedule updates; digital progress photographs, logs for Requests for Information, Change Orders, submittals/ shop drawings, and deficiencies. Keep a daily log available to the Owner, the Architect-Engineer and the Permitting Authority inspectors.
- (7) Subcontractor's Progress - Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.

- (8) Substantial Completion - Ascertain when the work or designated portions thereof are ready for the Owner's and Architect-Engineer's substantial completion inspection. From the Architect-Engineer's list of incomplete or unsatisfactory items, prepare a schedule for their completion indicating completion dates for the Owner's review. If the Contractor wishes the Architect-Engineer to conduct a pre-substantial completion inspection in conjunction with its own forces, the Architect-Engineer will prepare the pre-substantial punch list from which the Contractor will develop a completion schedule. The Architect-Engineer will issue a certificate of substantial completion when the work on the pre-substantial punch list has been accomplished (See **Exhibit E**).
- (9) Final Completion - Monitor the Subcontractor's performance on the completion of the project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form shown in **Exhibit F**.
- (10) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade subcontractors.
- (11) Record Drawings - During the progress of the work, the Contractor shall require the plumbing, utility, sitework, air conditioning, heating, ventilating, elevator, and electrical subcontractors to record on their field sets of drawings the exact locations, as installed, of all conduit, pipe and duct lines whether concealed or exposed which were not installed exactly as shown on the contract drawings. The Contractor shall also record all drawing revisions that have been authorized by change order that effect wall or partition locations, door and window locations and other template changes. The exact routing of conduit runs shall be shown on these drawings.

Each drawing shall be noted "As Built" and shall bear the date and name of the subcontractors that performed the work. Where the work was installed exactly as shown on the contract drawings the sheets shall not be disturbed except as noted above.

The Contractor shall review the completed As-Built drawings and ascertain that all data furnished on the drawings are accurate and truly represent the work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, etc. are involved as part of the work, the Contractor shall furnish true elevations and locations, all properly referenced by using the original bench mark used for the institution or for this project.

2.2.10 Administrative Records

The Contractor will maintain files and records for review by the Owner and Architect-Engineer upon request such as, but not limited to the following:

Contracts or Purchase Orders	Lab Test Reports
Shop Drawing Submittal/Approval Logs	Insurance Certificates and Bonds
Equipment Purchase/Delivery Logs-	Contract Changes
Contract Drawings and Specifications	Material Purchase Delivery Logs
with Addenda	Technical Standards
Warranties and Guarantees	Design Handbooks
Cost Accounting Records:	As-Built" Marked Prints
Labor Costs	Operating & Maintenance Instruction
Material Costs	Daily Progress Reports
Subcontractor Payment Exception Report	Monthly Progress Reports
Equipment Costs	Correspondence Files
Cost Proposal Requests	Transmittal Records
Payment Request Records	Inspection Reports
Meeting Minutes	Bid/Award Information
Cost-Estimates	Punch Lists

The project records shall be available at all times to the Owner and Architect-Engineer for reference or review.

2.2.11 Owner Occupancy

The Contractor shall provide services during construction, which will provide a smooth and successful Owner occupancy of the project. The Contractor shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the Contractor "on line" in such conditions as will satisfy Owner operational requirements.

Contractor shall conduct their preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.

Contractor 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. They shall provide operational training, in equipment use, for building operators.

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

Contractor shall continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible.

The Owner will not occupy or take control of the Project until the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements specified in paragraphs 2.2.9(8), 2.2.9(10), 2.2.9(11), and 2.2.12 have been completed to the Owner's satisfaction excluding the requirements for a warranty inspection specified after Owner Occupancy.

2.2.12 Warranty

Where any work is performed by the Contractor's own forces or by subcontractors under contract with the Contractor, the Contractor shall warrant that all materials and equipment included in such work will be new except where indicated otherwise in the Contract Documents, and that such work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same work, the Contractor further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of [one (1)] year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Contractor shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. Also, the Contractor shall conduct, jointly with the Owner and the Architect-Engineer, a warranty inspection at a specified period of time after the date of Owner Occupancy.

ARTICLE 3: OWNER'S RESPONSIBILITIES

3.1 OWNER'S INFORMATION

The Owner shall provide full information regarding the requirements for the Project.

3.2 OWNER'S REPRESENTATIVE

The Owner shall designate a representative who shall be fully acquainted with the Project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in the Project. He shall render decisions promptly and furnish information expeditiously.

3.3 SITE SURVEY AND REPORTS

The Owner shall provide for the furnishing for the site of the project all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description.

3.4 APPROVALS AND EASEMENTS

The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities, as part of the Agreement.

3.5 LEGAL SERVICES

The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3.4 and such auditing services as may be required.

3.6 DRAWINGS AND SPECIFICATIONS

The Contractor will be furnished a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing.

3.7 COST OF SURVEYS & REPORTS

The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Contractor shall be entitled to rely upon the accuracy and completeness thereof.

3.8 PROJECT FAULT DEFECTS

If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, prompt written notice shall be given to the Contractor and Architect-Engineer.

3.9 FUNDING

The Owner shall furnish in accordance with the established schedule, reasonable evidence satisfactory to the Contractor that sufficient funds will be available and committed for the cost of the Project. The Contractor shall not commence any work, unless authorized in writing by the Owner.

3.11 LINES OF COMMUNICATION

The Owner and Architect-Engineer shall communicate with the Contractor's subcontractors or suppliers only through the Contractor.

3.12 LINES OF AUTHORITY

The Owner shall establish and maintain lines of authority for its personnel and shall provide this definition to the Contractor and all other affected parties.

3.13 PERMITTING & CODE INSPECTIONS

The Contractor must recognize and fully cooperate and coordinate with the Permitting Authority during the course of the Project.

ARTICLE 4: PERMITTING AND INSPECTION

Before Work can begin, it is necessary by statute for the Contractor to obtain a Building Permit. In addition, construction will be inspected for code compliance, compliance with drawings and specifications, and quality by inspectors working for the Permitting Authority. The building permitting and code inspection requirements shall be as described in Articles 4.1 through 4.2 hereinafter.

For all New Construction and Modifications to Existing State Facilities, permits are required per FS 633.022 and 633.85.

4.1 BUILDING PERMITS

The Contractor is obligated to obtain and pay for a building permit from the local authority for construction of this State facility and from the State Fire Marshal. The State Fire Marshal has jurisdiction over any new construction, renovations, or alterations to any existing state-owned building or state-leased space in order to comply with uniform fire safety standards.

In the case of building, mechanical, plumbing, electrical, other internal system permits and connection permits, the Contractor is obligated to obtain such permits and pay such fees.

The Contractor shall determine the permits and fees required by any entity having jurisdiction over any part of the project and shall include the cost of all such permits in its bid proposal.

The State Fire Marshal has jurisdiction of all State Facilities.

4.2 CODE INSPECTIONS

All projects will require detailed code compliance inspections by the local authorities with jurisdiction over the area in which the project is located. The disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building. The Contractor shall make all permits, drawings, specifications, previous inspection reports, and change documents available to Code Inspectors. The Contractor shall provide a copy of each inspection report to the Architect-Engineer and Owner in a timely fashion.

ARTICLE 5: SUBCONTRACTS

5.1 DEFINITION

A subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the work at the site. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect-Engineer and any subcontractor.

5.2 PROPOSALS

Subject to Article 7, the Contractor shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after review of each proposal and is satisfied that the subcontractor is qualified to perform the work. The Contractor shall provide as **Exhibit D**, attached hereto and incorporated herein by reference, the Contractor's List of Subcontractors, which shall list by name and general Project responsibility (trade) each subcontractor who will be utilized by the Contractor to provide goods and services with respect to the Project. The Contractor shall not enter into any agreement with any subcontractor or supplier to which the Owner raises a reasonable, timely objection; shall promptly notify the Owner in writing of any proposed replacements, the reasons therefore, and the name and qualifications of the proposed replacement. The Owner shall have the right, in its reasonable discretion, to reject any proposed replacement.

5.3 REQUIRED SUBCONTRACTORS' QUALIFICATIONS AND SUBCONTRACT CONDITIONS

5.3.1 Subcontractual Relations

By an appropriate written agreement, the Contractor shall require each subcontractor to the extent of the work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume

toward the Contractor all the obligations and responsibilities which the Contractor by these Documents, assumes toward the Owner and the Architect-Engineer. Said agreements shall preserve and protect the rights of the Owner and Architect-Engineer under the Contract Documents with respect to the work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with their sub-subcontractor.

The Contractor shall make available to each proposed subcontractor, prior to the execution of a subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Article 5.3 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 his sub-subcontractors.

5.3.2 Subcontract Requirements

- (1) On all subcontracts where the bid exceeds \$100,000, the Contractor shall require subcontractors to provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Financial Services, Office of Insurance Regulation. If the Contractor wishes to award subcontracts to subcontractors unable to supply this bonding, special authorization may be requested to do so from the Owner.
- (2) On all subcontracts where the bid exceeds \$200,000.00, each subcontractor must provide proof of their experience to perform the trade and a financial statement to the Contractor. The subcontractors' financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.
- (3) Workforce - The subcontractor must agree to perform no less than 15% of the project construction work utilizing its own employees.
- (4) Subcontractor experience - The subcontractor must have successfully completed no less than two projects of similar size and complexity within the last five years.
- (5) Supervision - The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and 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 they have identified to supervise and schedule the work.
- (6) All subcontracts shall provide:
 - (A) **LIMITATION OF REMEDY - NO DAMAGES FOR DELAY** - That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 15% for overhead and profit and bond costs.

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

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

5.4 RESPONSIBILITIES FOR ACTS AND OMISSIONS

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

5.5 SUBCONTRACTS TO BE PROVIDED

The Contractor shall provide a copy of each subcontract, including the general supplementary conditions, to the Owner upon request.

ARTICLE 6: SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

6.1 PROJECT SUBSTANTIAL COMPLETION DATE, PROJECT FINAL COMPLETION DATE

At the time a Notice To Proceed is established, a project Substantial Completion date and a project Final Completion date for completion of the project in accordance with the project schedule, shall also be established. The Contractor agrees to complete the construction in accordance with the agreed upon Substantial Completion date and Final Completion date. The Contractor acknowledges that failure to complete the project within the construction time set forth in the approved schedule may result in substantial damages to the Owner, for all of which damages the Contractor shall be liable.

6.2 LIQUIDATED DAMAGES

- (1) In the event the work is not completed on the completion date, and inasmuch as failure to complete the project within the time fixed in the bid will result in substantial injury to the owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is hereby agreed that, if the project is not completed within the fixed time, the Contractor shall pay to the Owner, as liquidated damages for such delay and not as a penalty, [five hundred dollars (\$500)] for each calendar day elapsing between the date fixed for completion and the actual date of completion.
- (2) The liquidated damages shall be payable in addition to any excess expenses or costs payable by the Contractor to the Owner under the Construction Project Agreement and shall not preclude the recovery of damages by the Owner under other provisions of the Contract for Construction, except claims related to Contractor's delays in Substantial Completion.
- (3) Owner's right to receive liquidated damages shall in no manner affect the Owner's right to terminate the Contract for Construction, as provided in the Construction Project Agreement. The Owner's exercise of the right to terminate shall not release the Contractor from the obligation to pay said liquidated damages.
- (4) When the Owner reasonably believes (1) that Substantial Completion will be inexcusably delayed or (2) that the Contractor will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor the daily amount specified for liquidated damages as described above for each calendar day of the unexcused delay. If and when the Contractor overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

6.3 EFFECTIVE DATE OF WARRANTIES

Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the date of Substantial Completion of the project.

ARTICLE 7: CONTRACTOR'S COMPENSATION

7.1 CONTRACT PRICE

In consideration of the performance of the Agreement, the Owner agrees to pay the Contractor as compensation for his services, a fixed price as set forth in **Exhibit B**. The Owner shall pay and the Contractor shall accept, as full and complete payment for the Contractor's timely and complete performance of its obligations herein the fixed price specified. Such amount is the Construction Contract Price and includes the aggregate amount of all allowances and any unit price items to be furnished or installed.

The Contract Price will be subject to modification for changes in the project as provided in Article 8.

7.1.1 Construction Fee

Prior to construction, the Owner will direct the Contractor in writing with issuance of a Notice To Proceed to commence with construction. The Contractor's compensation for work or services performed during construction shall be as described in **Exhibit B**. The Contract Price shall be invoiced and paid based on milestones in the project payment schedule. Monthly payments shall become due upon the Owner's and Architect-Engineer's receipt of a request for payment from the Contractor, on Owner's standard form, and following the issuance of the Notice To Proceed by the Owner, and the final monthly payment shall be paid only when construction of the project is finally complete and occupancy of the project accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner. The Owner agrees to pay the Contractor for the construction fees stipulated in Articles 7.1.2 and 7.1.3.

- (1) Adjustments in Price - For changes in the Project as provided in Article 8, the contract price shall be adjusted as follows:
 - (A) The Contractor shall be paid an additional fee subject to negotiation if the Contractor is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Contractor.
 - (B) Contractor's Exclusive Remedy: In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect-Engineer, or is attributable to the Owner or the Architect-Engineer, the Contractor's sole and exclusive remedy is an extension of the construction completion date and payment of additional Construction fees and Overhead and Profit for construction as provided above.

7.1.2 Indirect Cost Items

The following are included in the contract price for main office overhead and general requirements during construction:

- (1) Salaries or other compensation of the Contractor's employees at their principal office and branch offices whom are assigned to the Project.

The Contractor's personnel to be assigned during construction, their duties and responsibilities to this project and the duration of their assignments are shown on **Exhibit C**.

- (2) General operating expenses related to this project of the Contractor's principal and branch offices.
- (3) The costs of all data processing staff.

- (4) Salaries or other compensation of the Contractor's employees at the job site. The Contractor's personnel to be assigned to the site during construction under the job site management and supervision fee, their duties and responsibilities and the duration of their assignment are shown on **Exhibit C**.
- (5) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 7.1.3.
- (6) Those services set forth in Article 2.2.8(1).

7.1.3 Direct Cost Items

The following costs necessarily incurred in the Project during the construction for project overhead, general requirements and direct costs are included in the contract price.

- (1) Wages paid for labor (as opposed to wages paid to management or supervisory personnel) in the direct employ of the Contractor in the performance of the work under this Agreement.
- (2) Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.
- (3) Payments due to subcontractors from the Contractor or made by the Contractor to subcontractors for their work performed pursuant to contract under this Agreement.
- (4) Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the work, and cost less salvage value on such items used but not consumed which remain the property of the Contractor.
- (5) Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Contractor or other, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a sub-contractor or the Contractor's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.
- (6) Cost of the premiums for all insurance and cost of premiums for all bonds which the Contractor is required to procure by this Agreement specifically for the construction project. This includes any sub-contractor bonds the Contractor deems appropriate.
- (7) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Contractor is liable.
- (8) The cost of corrective work subject, however, to the Contract Price and except for any corrective work made necessary because of defective workmanship or other causes contributed to by the Contractor or their subcontractors or suppliers.

No costs shall be paid by the Owner to the Contractor for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Drawings and Specifications or to correct any deficiency or damage caused by negligent acts by the Contractor.

- (9) Minor expenses at the site, such as, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.
- (10) Costs for trash and debris control and removal from the site.
- (11) Cost incurred due to an emergency affecting the safety of persons and property.

- (12) Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations:
 - (A) The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
 - (B) The legal costs were not incurred as result of the Contractor's own negligence or default.

This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by Contractor itself, for change orders or in enforcing the obligations of this contract.

- (13) All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Contractor's fees as set forth in Article 7.1.2.
- (14) If requested by the Owner, the Contractor will perform all or a portion of any item in Article 7.1.3 for the cost of the work.
- (15) If approved by the Owner, the Contractor, when qualified, may perform all or a portion of the work for any item listed on the Contract Price breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.
- (16) Transportation greater than 100 miles from the site for those personnel employed directly for the project. Such transportation must be approved in advance by the Owner and may be in accordance with the Contractor's standard personnel policy but not exceeding the limits established by Florida Statute 112.061.
- (17) Costs of all reproductions used for bidding or information purposes required by the project to directly benefit the project.
- (18) Costs of general job office supplies including paper, pencils, paper clips, file folders, staples, etc. and janitorial supplies.
- (19) Costs for watchman and security services for the project.
- (20) Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space.
- (21) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
- (22) Costs for any job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Contractor as required to complete the work.
- (23) Cost of utilizing a computer aided design and drafting application (CADD) for record drawings as described in Article 2.2.9(11). Upon completion of the work, the Contractor shall obtain two (2) paper copies and two (2) sets of disk files from the Architect-Engineer and record to scale all as-built conditions. The disk shall be submitted to the Architect-Engineer when completed, together with two sets of blue line or black line prints for certification and forwarding to the Owner/ Client Agency, at the time of final completion.

For those Contractors who do not have CADD capabilities, the as-built marked-up drawings will be submitted to the Architect-Engineer. The Architect-Engineer will make the electronic updates and provide two (2) paper copies and two (2) sets of CADD disk files and return them to the Contractor for development of the close-out documents.

7.1.4 Overhead and Profit For Construction

For overhead, profit and general expenses of any kind, for services provided during and related to the construction, the fee shall be as described in **Exhibit B** and shall be paid proportionally to the ratio of the cost of the work in place, and less retainage (see Article 10.1), as it bears on the latest estimate of the total construction cost or to the Contract Price, whichever is less. The balance of the fee shall be paid when construction of the project is finally completed and occupancy of the project accepted by the Owner. If construction is authorized only for a part of the project, the fee paid shall be proportionate to the amount of work authorized by the Owner.

ARTICLE 8: CHANGE IN THE PROJECT

8.1 CHANGE ORDERS

The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, the Contract Price, and the Construction Completion Date, being adjusted accordingly. All changes in the Project shall be authorized by Change Order signed by the Owner before the change is implemented (See **Exhibit J**).

8.1.1 Definition

A Change Order is a written order to the Contractor signed by the Owner issued after the execution of this Agreement, authorizing a Change in the Project, the Contractor's fee, or the Construction Completion date. Each adjustment in the Contract Price resulting from a change order shall clearly separate the amount attributable to the cost of the Project.

8.1.2 Acceptable Ways of Determining Increases or Decreases in the Contract Price on Change Orders

The increase or decrease in the Contract Price resulting from a change in the Project shall be determined in one or more of the following ways:

- (1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner;
- (2) by unit prices stated in the Agreement or subsequently agreed upon;
- (3) by cost as defined in Article 7 and a mutually acceptable fixed or percentage fee; or
- (4) by the method provided in Article 8.1.3.

8.1.3 Itemized Accounting on Change Orders

If none of the methods set forth in Article 8.1.2 are agreed upon, the Contractor, provided a written order signed by the Owner is received, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect-Engineer will establish an estimated cost of the work and the Contractor shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 8.1.2 above, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the cost of the Project as outlined in Article 7. The amount of decrease in the Contract Price to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

8.1.4 Adjustments in Unit Prices and Contract Price Due to Inequitable Quantity Changes

If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of work

proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices and Contract Price shall be equitably adjusted.

8.1.5 Concealed Conditions

Should concealed conditions encountered in the performance of the work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Contract Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 8.2.

8.2 CLAIMS FOR ADDITIONAL COST OR TIME

All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 14.

If the Contractor is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect-Engineer or of any employee of either or by any separate Contractor employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control or by delay authorized by the Owner pending resolution of disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Project Team may determine.

Only delays which are determined to extend the critical path of the schedule for constructing the Project will result in a time extension. Neither the Owner nor the Contractor shall be considered to own the schedule float time.

8.3 MINOR CHANGES IN THE PROJECT

The Architect-Engineer will have authority to order minor changes in the Project not involving an adjustment in the Contract Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order. Documentation of changes shall be determined by the Project Team, and included in monthly reporting. Changes shall be approved by the Project Manager and Architect-Engineer.

8.4 EMERGENCIES

In any emergency affecting the safety of persons or property, the Contractor shall act at their discretion to prevent threatened damage, injury or loss. Any increase in the Contract Price or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 8.

ARTICLE 9: DISCOUNTS AND PENALTIES

9.1 DISCOUNTS AND PENALTIES

All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the Project is paid directly by the Owner or from a fund made available by the Owner to the Contractor for such payments. To the extent the Cost of the Project is paid with funds of the Contractor, all cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project. All penalties incurred due to fault of the Contractor for late payment of cost of the project will be paid by the Contractor.

ARTICLE 10: PAYMENTS TO THE CONTRACTOR

10.1 MONTHLY STATEMENTS

The Contractor shall submit to the Owner a statement, sworn to if required, showing in detail all monies paid out, cost accumulated, or costs incurred on account of the cost of the Project during the previous period and the amount of the Contractor's fees due as provided in Article 7. Ten percent (10%) retainage shall be held on all payments until the contract is fifty percent (50%) complete, except when approved by the Owner certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. In such cases, if the Owner makes any payment of retainage to the Contractor which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the Contractor shall timely remit payment of such retainage to those subcontractors and suppliers. Unless otherwise stated herein, the term "50% completion" refers to the point at which the Owner has expended 50% of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in this agreement. At 50% completion, the Owner must reduce the retainage from 10% to 5%. Pursuant to Section 255.078(4), Florida Statutes, after 50% completion of the construction services purchased pursuant to this Agreement, the Contractor may present to the Owner a payment request for up to one-half of the retainage held by the Owner. The Owner shall promptly make payment to the Contractor, unless the Owner has grounds, pursuant to Section 255.078(6), Florida Statutes for withholding the payment of retainage. If the Owner makes payment of retainage to the Contractor which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the Contractor shall timely remit payment of such retainage to those subcontractors and suppliers.

The Contractor's Construction Fee and Overhead & Profit shall be shown as separate line items on the Schedule of Contract Values. Payment of the Contractor's Overhead and Profit shall be calculated based on the Construction Contract Price Balance. The Construction Contract Price Balance is established by subtracting the Construction Fee and Overhead & Profit from the latest estimate of the total construction cost. The billable Overhead and Profit is calculated by multiplying the percent complete of the Construction Contract Price Balance. This data shall be attached to the Partial Pay Request form shown in **Exhibit G**. Payments by the Owner to the Contractor shall be made as described in Article 15.6 hereinafter.

10.2 FINAL PAYMENT

Final payment constituting the unpaid balance of the cost of the Project and the Contractor's fee, shall be due and payable as described in Article 15.6 after the Owner has accepted occupancy of the project, provided that the Project be then finally completed, that the Contractor has verified by signature that all items specified on the attached Closeout Documentation Checklist **Exhibit H** are completed, and that this Agreement has been finally performed. However, if there should remain work to be completed, the Contractor and the Architect-Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to 150% of the estimated cost of completing any unfinished work and portion of the Contractor's retainage, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, Owner shall pay to Contractor, monthly, the amount retained for each incomplete item after each of said items is completed.

10.3 PAYMENTS TO SUBCONTRACTORS

The Contractor shall promptly, within 10 days after receipt of payment from the Owner, pay all the amount due subcontractors and suppliers less a retainage of ten percent (10%) until the project is fifty percent (50%) complete. After the project is fifty percent (50%) complete, the Contractor may elect to withhold retainage from payments to its subcontractors at a rate higher than 5 percent (5%). The specific amount to be withheld must be determined on a case-by-case basis and must be based on the contractor's assessment of the subcontractor's past performance, the likelihood that such performance will continue, and the Contractor's ability to rely on other safeguards. The Contractor shall notify the subcontractor, in writing, of its determination to withhold more than 5% of the progress payments and the reasons for making that determination, and the Contractor may not request the release of such retained funds from the Owner. If there should remain items to be completed, the Contractor and Architect-Engineer shall list those items required for completion and the Contractor shall require the retainage of a sum equal to 150% of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items likewise listed separately. Thereafter, the Contractor shall pay

to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.

Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.

10.4 DELAYED PAYMENTS BY OWNER

The Owner shall submit a payment request for all undisputed amounts to the Chief Financial Officer for payment no more than twenty (20) days after receipt of an approvable payment request. If the Owner should fail to pay the Contractor within thirty (30) days after the receipt of an approvable payment request from the Contractor, then the Contractor may, upon seven (7) additional days written notice to the Owner and the Architect-Engineer stop the Project until payment of the Amount owed has been received.

10.5 PAYMENTS FOR MATERIALS AND EQUIPMENT

Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Owner on each occasion.

10.6 WITHHOLDING PAYMENTS TO SUBCONTRACTORS

The Contractor shall not withhold payments to subcontractors if such payments have been made to the Contractor. Should this occur for any reason, the Contractor shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping as required.

ARTICLE 11: INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

11.1 INDEMNITY

- (1) The Contractor agrees to indemnify and hold the Owner and Architect-Engineer harmless from all claims for bodily injury and property damage (other than the work itself and other property insured under Paragraph 11.2(3)) that may arise from the Contractor's operations under this Agreement.
- (2) The Owner shall cause any other contractor who may have a contract with the Owner to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify the Owner and the Contractor and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 11.2(3)) that may arise from the Contractor's operations. Such provisions shall be in a form satisfactory to the contractor.

11.2 CONTRACTOR'S INSURANCE

- (1) The Contractor shall not commence any construction work in connection with this Agreement until they have obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on their subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida.
- (2) Worker's Compensation Insurance - The Contractor shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all its employees connected with the work of this Project and, in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this

contract at the site of the Project is not protected under the Worker's Compensation statute, the Contractor shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected.

- (3) Contractor's Public Liability and Property Damage Insurance-The Contractor shall take out and maintain during the life of this Agreement Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect them from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by the Contractor or by anyone directly or indirectly employed by them, and the amount of such insurance shall be minimum limits as follows:

Contractor's Comprehensive General Liability Coverages, Bodily Injury & Property Damage	\$500,000 Each Occurrence, Combined Single Limit
Automobile Liability Coverages, Bodily Injury & Property Damage	\$100,000 Each Occurrence, Combined Single Limit
Excess Liability, Umbrella Form	\$4,000,000 Each Occurrence, Combined Single Limit

Insurance clause for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis.

- (4) Subcontractor's Public Liability and Property Damage Insurance - The Contractor shall require each of their subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of their subcontractors in their policy, as specified above.
- (5) Owner's and Contractor's Protective Liability Insurance - The Contractor shall procure as a cost of the project and furnish an Owner's and Contractor's Protective Liability Insurance Policy with the following minimum limits:

Bodily Injury Liability & Property Damage Liability	\$500,000 Each Occurrence Combined Single Limit
---	---

- (6) "XCU" (Explosion, Collapse, Underground Damage - The Contractor's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
- (7) Broad Form Property Damage Coverage, Products & Completed Operations Coverages -The Contractor's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.
- (8) Contractual Liability Work Contracts - The Contractor's Liability Policy shall include Contractual Liability Coverage designed to protect the Contractor for contractual liabilities assumed by the Contractor in the performance of this Agreement.
- (9) Indemnification Rider
- (A) To cover to the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Architect-Engineer and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation

shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.

- (B) In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
 - (C) The obligations of the Contractor under this Article 11.2(9) shall not extend to the liability of the Architect-Engineer, their agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by the Architect-Engineer, their agents or employees providing such giving or failure to give is the primary cause of the injury or damage.
 - (D) The Contractor hereby acknowledges receipt of one hundred dollars and other good and valuable consideration as part of its fee in exchange for giving the Owner and Architect-Engineer, respectively, the indemnification provided above in Article 11.2(9). The limit of such indemnification shall be \$1,000,000.00 per occurrence.
- (10) **Builder's Risk Coverage** - The Contractor shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form as a cost of the Project, issued to provide coverages on an "all risk" basis including theft. This coverage shall not be lapsed or cancelled because of partial occupancy by the Owner prior to final acceptance of the Project.
- (11) **Certificate of Insurance** - The Owner shall be furnished proof of coverage of Insurance as follows:
- Certificate of Insurance form will be furnished to the Owner along with the Contract Documents. These shall be completed and signed by the authorized Florida Resident Agent, and returned to the Bureau of General Services. This Certificate shall be dated and show:
- (A) The name of the insured Contractor, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.
 - (B) Statement that the Insurer will mail notice to the Owner and a copy to the Architect-Engineer at least fifteen (15) days prior to any material changes in provisions or cancellation of the policy.
 - (C) Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverages required in this Section commencing at 11.2 and ending with 11.3.4.
 - (D) Certificate of Insurance shall state that the Owner is listed as additional insured on all appropriate policies.
 - (E) Copy of the endorsement or additional insured rider to the General Liability Policy.
 - (F) License/Registration Number of authorized Resident Agent.

11.3 WAIVER OF SUBROGATION

11.3.1 Damages Caused By Perils Covered By Insurance

The Owner and the Contractor waive all rights against each other, for damages caused by perils covered by insurance provided under Article 11.2 to the extent covered by such insurance except such rights as they may have to the

proceeds of such insurance held by the Owner and Contractor as trustees. The Contractor shall require similar waivers from all subcontractors and their sub-subcontractors.

11.3.2 Loss or Damage to Equipment Covered by Insurance

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

11.3.3 Property and Consequential Loss Policies

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

11.3.4 Endorsement of Policies

If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 12: TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM CONTRACTOR'S OBLIGATION

12.1 TERMINATION BY THE CONTRACTOR

If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor, or if the Project should be stopped for a period of sixty (60) days by the Contractor, for the Owner's failure to make payments thereon, then the Contractor may, upon seven days written notice to the Owner, request payment for all work executed, the Contractor's fees earned to date, and for any proven loss, injury or damage sustained or incurred by the Contractor that is recoverable under Florida law.

12.2 OWNER'S RIGHT TO PERFORM CONTRACTOR'S OBLIGATIONS AND TERMINATION BY OWNER FOR CAUSE

- (1) If the Contractor fails to perform any of their obligations under this Agreement including any obligation they assume to perform work with their own forces or those of a subcontractor, the Owner may, after seven (7) days written notice during which period the Contractor fails to commence and sufficiently pursue correction of such obligation, make good such deficiencies. The Cost of the Project shall be reduced by the cost to the Owner of making good such deficiencies and the Contractor's Construction Fee shall be reduced by an amount required to manage the making good of such deficiencies.
- (2) If the Contractor is adjudged as bankrupt, or if they make a general assignment for the benefit of their creditors, or if a receiver is appointed on account of their insolvency, or if they persistently or repeatedly refuse or fail, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 45 days or more behind schedule) which has been adopted by the Project Team, or if the Contractor fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Contractor and their surety, if any, seven (7) days written notice, during which period Contractor fails to commence correction of the violation, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and may finish the Project by whatever method deemed expedient. In such case, the

Contractor shall not be entitled to receive any further payment until the Project is finished nor shall they be relieved from the obligations herein. Reasonable termination expenses incurred by the Owner may be deducted from any payments left owing the Contractor (excluding monies owed the Contractor for subcontract work).

- (3) If the Contractor refuses 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 by the Contractor in conjunction with this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Contractor and its surety, if any, seven (7) days written notice, during which period Contractor still fails to allow access, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Contractor, and may finish the Project by whatever method may be deemed expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Project is finished nor shall they be relieved from their obligations herein. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing the Contractor (excluding monies owed the Contractor for subcontract work).

12.3 TERMINATION BY OWNER WITHOUT CAUSE

- (1) If the Owner terminates this Agreement other than pursuant to Article 12.2(2) or Article 12.2(3), the Owner shall reimburse the Contractor for any unpaid Cost of the Project due under Article 8, plus that part of the unpaid balance of the Construction Fee in an amount as will increase the payment on account of their fee to a sum which bears the same ratio to the Construction Fee as the Cost of the Project at the time of termination bears to the Construction Contract Price. The Owner shall also pay to the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of Agreement the Owner may further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article 12, execute and deliver all such papers and take all such steps including the legal assignment of their contractual rights, as the Owner may request or require for the purpose of fully vesting in them the rights and benefits of the Contractor.
- (2) After the establishment of the Construction Contract Price, if the final cost estimates or lack of legislative funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement and pay the Contractor their proportionate fee due in accordance with Article 7.1.

ARTICLE 13: ASSIGNMENT AND GOVERNING LAW

13.1 ASSIGNMENT CONSENT

Neither the Owner nor the Contractor shall assign its interest in this Agreement without the prior written consent of the other except as to the assignment of proceeds.

13.2 GOVERNING LAWS

This Agreement shall be governed by the Laws of the State of Florida. Disputes shall be adjudicated in Leon County, Florida.

ARTICLE 14: NOTICE OF CLAIM, WAIVER OF REMEDIES, NO DAMAGES FOR DELAY

14.1 GOVERNING PROVISIONS

The Contractor's right to make claims arising out of or related to the subject matter of this Agreement, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:

- (1) All claims must be submitted as a Request for Change Order in the manner as provided herein;
- (2) The Contractor must submit a Notice of Claim to Owner and to the Architect-Engineer within 20 days of when the Contractor was or should have been aware of the occurrence of the event giving rise to the claim; and
- (3) Within 10 days of submitting its Notice of Claim, the Contractor shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.

The Contractor agrees that the Owner shall not be liable for any claim that the Contractor fails to submit as a Request for Change Order as provided in this paragraph.

14.2 WRITTEN DETERMINATION OF CLAIM

After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Contractor its written determination of the claim. As to matters subject to the determination by final agency action (not actions for breach of contract or tort) the Owner's written decision shall be final agency action unless the Contractor requests an administrative proceeding pursuant to Section 120.57, Florida Statutes, by filing a petition in compliance with Rule Chapter 28-106, F.A.C. within twenty-one (21) days of the Contractor's receipt of the Owner's determination.

The venue for all civil and administrative actions against the Owner shall be in Leon County, Florida, unless otherwise agreed by the parties.

14.3 EXCLUSIVE REMEDY FOR DELAYS

For work the Contractor performs with its own forces, and in addition to the adjustments provided for in Article 7, the Contractor's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 14.1 above, for an extension of the scheduled construction time. In the event of a material change in such work, the Contractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus profit as identified in Article 7.1.4. The Contractor expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

ARTICLE 15: MISCELLANEOUS

15.1 HARMONY

The Contractor is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by Contractor and their subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building contractors now or hereafter on the site of the Project.

The Contractor further agrees that this provision will be included in all subcontracts of the subcontractors as well as the Contractor's own subcontracts; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

15.2 APPRENTICES

If the Contractor employs apprentices on the Project, the behavior of the Contractor and the Owner shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice

programs and agreements established by the State of Florida, Department of Business and Professional Regulation. The Contractor will include a provision similar to the foregoing sentence in each subcontract.

15.3 INVOICES

Invoices shall be submitted in detail sufficient for a proper preaudit and postaudit thereof. Invoices for any travel expenses shall be submitted in accordance with procedures specified in Section 112.061 of the Florida Statutes governing payments by the State for travel expenses.

15.4 CONTRACTOR'S PROJECT RECORDS

The Contractor's Project Records shall be maintained as prescribed hereinabove in accordance with the State of Florida General Records Schedule for State Agencies A-1 and shall be made available to the Owner or its authorized representative at mutually convenient times.

15.5 MINORITY PARTICIPATION

The Contractor shall diligently attempt to award some portion of its material contracts and subcontracts to qualified minority-owned businesses. The Florida Office of Supplier Diversity, Department of Management Services will assist in furnishing names of certified minority-owned businesses, upon request. A Contractor's Minority Business Enterprises Status Report of Partial Payment form is attached to this Agreement as **Exhibit K** and is to be completed and submitted with each pay request for MBE participation.

15.6 CONTRACTOR'S PAYMENT RIGHTS

Upon receipt, the Owner has twenty (20) days to inspect and approve the goods and services. The Owner has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the Pay Request is received or the goods or services are received, inspected and approved.

If payment is not available to the Owner for transmittal to the Contractor within 40 days, a separate interest penalty set by the Chief Financial Officer pursuant to Section 55.03, Florida Statutes, will be due and payable in addition to the invoice amount. To obtain the applicable interest rate, please contact the agency's Fiscal Section on their website. The 40 days are also measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved. Interest penalties of less than one (1) dollar will not be enforced unless the Contractor requests payment. Pay Requests which must be returned to the Contractor due to Contractor's preparation errors will result in a delay in the payment and will not incur interest. The payment requirements for Pay Requests do not start until a properly completed Pay Request is provided to the Owner.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at the Department of Financial Services website.

15.7 PUBLIC ENTITY CRIME INFORMATION STATEMENT

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, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

15.7.1 Criminal Background Checks

Criminal History Background Checks shall be obtained for all employees and agents of the Contractor and their subcontractors, their agents and employees, and all other persons performing any of the work under a contract to the Contractor working within buildings or facilities either owned or managed by the Florida Department of Agriculture and Consumer Services. The Contractor may also be required to perform Criminal History Background Checks for all employees and agents of the Contractor and their subcontractors, their agents and employees, and all other persons performing any of the work under a contract to the Contractor working within buildings or facilities owned or managed by other government entities.

The Contractor is obligated to obtain and pay for each Criminal History Background Report (“Report”), which may be obtained by accessing the website of the Florida Department of Law Enforcement online at <https://web.fdle.state.fl.us/search/app/default>. The Contractor must supply FDLE with the employee’s complete social security number to allow FDLE to run the Report. However, there is no need for either the Inspector General or the Florida Department of Agriculture and Consumer Services’ office to have this number in its entirety. Therefore, prior to sending reports to the Florida Department of Agriculture and Consumer Services, and to maintain confidentiality, the Contractor must blacken out all but the last four digits of the individual’s social security number.

The Contractor shall forward the Report to the following e-mail address located in Tallahassee, Florida: Procurement@FDACS.gov. The Florida Department of Agriculture and Consumer Services will make a recommendation regarding whether or not to allow entry/occupation of the buildings/facilities. The records are kept on file for one year.

15.8 UNAUTHORIZED ALIENS

The Owner shall consider the employment by the Contractor of an unauthorized or undocumented alien to be a *prima facie* violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be grounds for immediate, unilateral termination of this Agreement.

15.8.1 Unauthorized Aliens Checks Through E-Verify

Pursuant to the State of Florida, Office of the Governor, Executive Order Number 11-116, Contractor will utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of (1) all persons employed during the term of the Contract by Contractor to perform employment duties within Florida within 3 business days after the date of hire and (2) all persons (including subcontractors) assigned by Contractor to perform work pursuant to the Contract with the Department within 90 calendar days after the date the Contract is executed or within 30 days after such persons are assigned to perform work pursuant to the Contract, whichever is later.

15.9 DISCRIMINATION; DENIAL OR REVOCATION FOR THE RIGHT TO TRANSACT BUSINESS WITH PUBLIC ENTITIES

An entity or affiliate who has been placed on the discriminatory vendor list 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.

15.10 ELECTRONIC MAIL CAPABILITIES

The Contractor must have e-mail capabilities through the Internet. It is the intention of the Florida Department of Agriculture and Consumer Services to use e-mail communication for all projects whenever possible. The Contractor shall provide and update their e-mail address and the name of a contact person responsible for their electronic communications.

15.11 APPROPRIATION CONTINGENCY

The State’s performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Florida Legislature.

15.12 ASSIGNMENT

For and in recognition of good and valuable consideration, receipt of which is hereby acknowledged, the Contractor hereby conveys, sells, assigns and transfers to the State of Florida all rights, title and interest in and to all causes to action it may now or hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the particular goods or services purchased or acquired by or on behalf of the State of Florida pursuant to this Agreement.

15.13 DAVIS-BACON ACT REQUIREMENTS

If any portion of this Project is paid for with federal funds, then all applicable federal labor standards clauses are incorporated into the Contract Documents. The Contractor agrees to familiarize him/herself with “*Making Davis-Bacon Work – A Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects*” and to comply with all applicable regulations.

15.14 EMPLOYMENT OF STATE RESIDENTS

To the extent permitted by federal law, the Contractor shall give preference to the employment of state residents in the performance of the work on the project if state residents have substantially equal qualifications to those of nonresidents. The term “substantially equal qualifications” means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.

15.15 POSTING OF JOB OPENINGS

The Contractor will contact the Florida Agency for Workforce Innovation to post its employment needs in the State’s job bank system.

15.16 CONFIDENTIALITY OF BUILDING PLANS

Pursuant to Section 119.071(3)(b), Florida Statutes, all building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from inspection or disclosure under Florida’s Sunshine laws. The Contractor agrees to protect and ensure the confidentiality of such documents under its custody or control in conformance with the requirements of Section 119.071(3), Florida Statutes, and all applicable law.

Any knowing violation of Chapter 119, Florida Statutes, may be sufficient grounds for immediate termination of the Contract by the Florida Department of Agriculture and Consumer Services.

15.17 COOPERATION WITH THE INSPECTOR GENERAL

Pursuant to section 20.055(5), Florida Statutes, the Contractor and its subcontractors understand and will comply with their duty to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

15.18 CURRENT FUNDING LIMITATIONS

The Owner's current funding only allows for an expenditure of funds towards the Construction Contract Price as described in **Exhibit B**. Any further services and/or construction require additional funding and are only to be commenced upon receipt of a specific written authorization from the Owner's Project Manager. The effectiveness of that part of this contract that applies to work beyond the Construction Contract Price is contingent upon receiving additional funds from the Legislature. If the Legislature does not furnish additional funds towards the Project for work beyond the Construction Contract Price, the Owner may terminate this contract except that part thereof pertaining to an expenditure of funds as described in **Exhibit B** toward construction, by written notice to the Contractor. In the event of such termination, the Owner shall not be liable for any payment to the Contractor other than that required for an expenditure of funds as described in **Exhibit B** toward construction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

[CORPORATION NAME]

ATTEST:

APPROVED:

By _____
Corporate Secretary

By _____
Corporate President

As Witnessed:

By _____
Print Name _____

(Corporate Seal)

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

APPROVED:

By _____
Joey B. Hicks
Director, Division of Administration

As Witnessed:

By _____
Print Name _____

EXHIBIT A: PROJECT TEAM PRIMARY REPRESENTATIVES

Owner – Florida Department of Agriculture and Consumer Services

[Name] Project Manager, General Services, Division of Administration
Allan Golden..... Facilities Management Administrator, General Services, Division of Administration
Casey Drake..... Bureau Chief, General Services, Division of Administration
Joey Hicks..... Director, Division of Administration

Architect-Engineer

[Name] Principal
[Name] Design Project Manager

Contractor

[Name] President
[Name] Construction Project Manager
[Name] Construction Superintendent

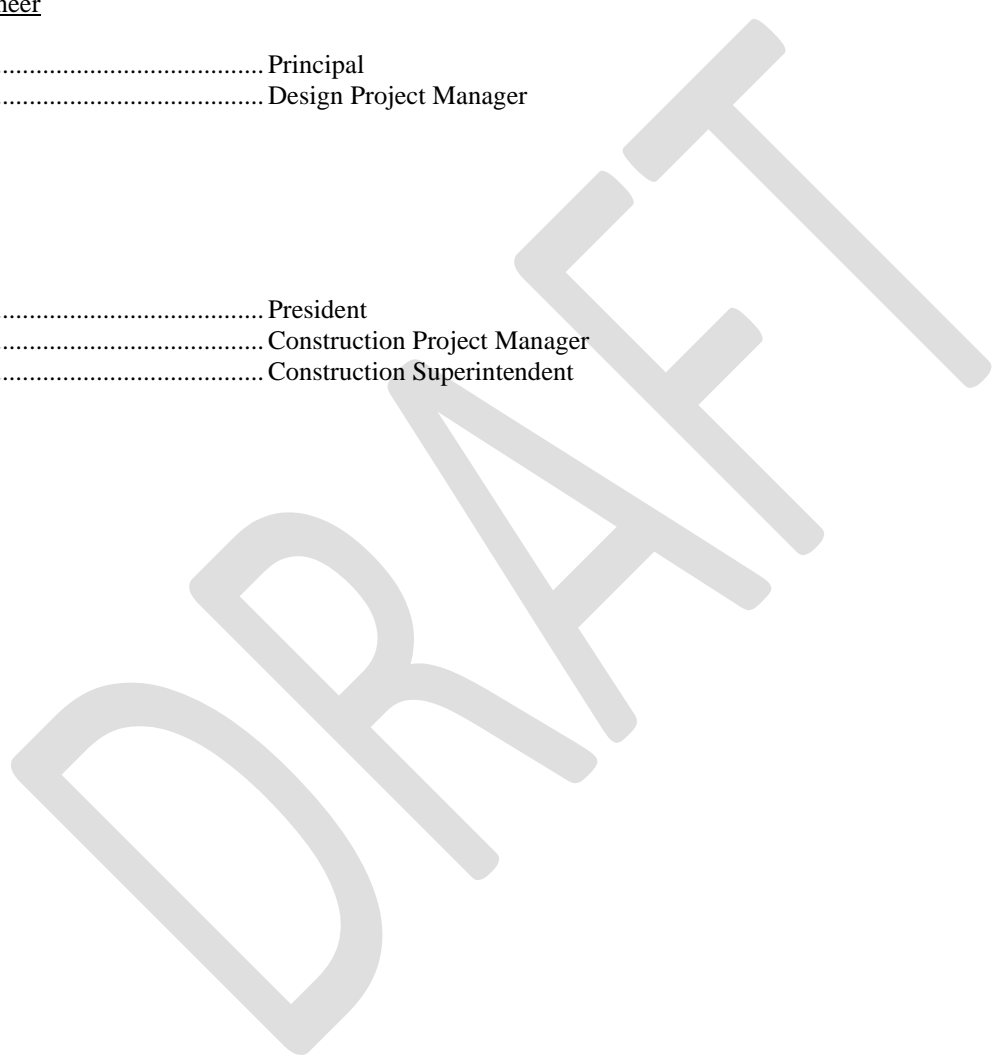


EXHIBIT B: CONSTRUCTION CONTRACT PRICE

ITEM DESCRIPTION

CONSTRUCTION PRICE

CONTRACTOR'S CONSTRUCTION FEE	
CONSTRUCTION FEE	<u>\$xxx,xxx.00</u>
CONSTRUCTION OVERHEAD & PROFIT	<u>\$xxx,xxx.00</u>
TOTAL CONSTRUCTION FEE+OHP	<u>\$xxx,xxx.00</u>
TOTAL CONSTRUCTION CONTRACT PRICE	<u>\$x,xxx,xxx.00</u>

DRAFT

EXHIBIT C: CONTRACTOR'S KEY LIST OF PROJECT PERSONNEL

NAME	TITLE	ON-SITE SUPPORT STAFF	OFF-SITE SUPPORT STAFF	DURATION (MONTHS)	PERCENTAGE OF TIME AVAILABLE

EXHIBIT D: CONTRACTOR'S LIST OF SUBCONTRACTORS



**NICOLE "NIKKI" FRIED
COMMISSIONER**

Florida Department of Agriculture and Consumer Services
Division of Administration
Bureau of General Services

LIST OF SUBCONTRACTORS

Listed below are the names, addresses and telephone numbers of any/all subcontractors that will perform work related to the scope of work.

NAME/COMPANY: _____

TYPE OF WORK PERFORMED: _____

PERCENT OF WORK ALLOCATED TO THIS PROJECT: _____

MAILING ADDRESS: _____

CITY _____ STATE: _____ ZIP: _____

TELEPHONE NUMBER: (_____) _____

NAME/COMPANY: _____

TYPE OF WORK PERFORMED: _____

PERCENT OF WORK ALLOCATED TO THIS PROJECT: _____

MAILING ADDRESS: _____

CITY _____ STATE: _____ ZIP: _____

TELEPHONE NUMBER: (_____) _____

NAME/COMPANY: _____

TYPE OF WORK PERFORMED: _____

PERCENT OF WORK ALLOCATED TO THIS PROJECT: _____

MAILING ADDRESS: _____

CITY _____ STATE: _____ ZIP: _____

TELEPHONE NUMBER: (_____) _____

(Cont.)

NAME/COMPANY: _____

TYPE OF WORK PERFORMED: _____

PERCENT OF WORK ALLOCATED TO THIS PROJECT: _____

MAILING ADDRESS: _____

CITY _____ STATE: _____ ZIP: _____

TELEPHONE NUMBER: (_____) _____

NAME/COMPANY: _____

TYPE OF WORK PERFORMED: _____

PERCENT OF WORK ALLOCATED TO THIS PROJECT: _____

MAILING ADDRESS: _____

CITY _____ STATE: _____ ZIP: _____

TELEPHONE NUMBER: (_____) _____

NAME/COMPANY: _____

TYPE OF WORK PERFORMED: _____

PERCENT OF WORK ALLOCATED TO THIS PROJECT: _____

MAILING ADDRESS: _____

CITY _____ STATE: _____ ZIP: _____

TELEPHONE NUMBER: (_____) _____

EXHIBIT E: CERTIFICATE OF SUBSTANTIAL COMPLETION (SAMPLE)



Florida Department of Agriculture and Consumer Services
Division of Administration
Bureau of General Services

NICOLE "NIKKI" FRIED
COMMISSIONER

CERTIFICATE OF SUBSTANTIAL COMPLETION

From:

(Architect/Engineer)

To: (Project Manager)

Florida Department of Agriculture and Consumer Services
Division of Administration
Bureau of General Services
407 South Calhoun Street
Tallahassee, Florida 32399

FDACS Contract or PO No:
FDACS Complete Project Name:
Certificate of Occupancy Date: (OR COMPLETION CERTIF. DATE)
Date of Substantial Completion:

The work performed under this Contract has been reviewed and found to be substantially complete. The Date of Substantial Completion of the project or portion thereof designated below is hereby established as entered above.

THE PROJECT OR DESIGNATED PORTION SHALL INCLUDE:

Below (or attached hereto) is a list of items to be completed or corrected by the Contractor. The omission of items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents.

TO BE COMPLETED BY ARCHITECT/ENGINEER THROUGH	SUBSTANTIAL COMPLETION DATE	DATE	DAYS	LIQUIDATED DAMAGES
1.	Notice to Proceed (N.T.P)			\$500.00 per day
2.	Time Specified in Original Contract for Substantial Completion			
3.	Time Extension Granted by Change Orders			
4.	Total Days Allowed to Substantial completion (Add Lines 2 and 3)		0.00	
5.	Substantial Completion date & actual days from N.T.P. through Substantial Completion date		0.00	
6.	Substantial Completion Date Overrun (Subtract Line 4 from 5 and Enter Overrun. If line 5 less than line 4, enter 0.)		0.00	\$ -

ARCHITECT- ENGINEER	CONTRACTOR	OWNER
The work under this contract as stated above is Substantially Complete on the Date set above in accordance with the terms of the contract.	The work under this contract as stated above is Substantially Complete on the Date set above in accordance with the terms of the contract. The Contractor will complete or correct the work on the list of items above (or attached hereto) within the time prescribed in the contract from the above Date of Substantial Completion.	The Owner acknowledges the work or designated portion thereof as substantially complete on the date indicated above..
<i>Signature</i>	<i>Signature</i>	<i>Signature</i>
<i>Title</i>	<i>Title</i>	<i>Title</i>
<i>Date</i>	<i>Date</i>	<i>Date</i>
<i>Print Name</i>	<i>Print Name</i>	<i>Print Name</i>

EXHIBIT F: CERTIFICATE OF CONTRACT COMPLETION (SAMPLE)



Florida Department of Agriculture and Consumer Services
 Division of Administration
 Bureau of General Services

NICOLE "NIKKI" FRIED
COMMISSIONER

CERTIFICATE OF CONTRACT COMPLETION

From:
 (Contractor)

To: (Project Manager)
 Florida Department of Agriculture and Consumer Services
 Division of Administration
 Bureau of General Services
 407 South Calhoun Street
 Tallahassee, Florida 32399

FDACS Contract or PO No:
FDACS Complete Project Name:
Final Contract or PO Total Amount INCLUDING Total Liquidated Damages Below:
Date of Final Completion:

TO BE COMPLETED BY ARCHITECT/ENGINEER THROUGH FINAL COMPLETION DATE	DATE	DAYS	LIQUIDATED DAMAGES
1. Amount of Liquidated Damages at Substantial Completion date			
2. Time Specified in Original Contract between Substantial Completion & Final Completion			
3. Time Extension Granted by Change Orders			
4. Total Days Allowed Between Substantial & Final Completion (Add Lines 2 and 3)		0:00	\$ 500.00 per day
5. Contract Complete date & actual days between Substantial and Final Completion			
6. Final Completion Overrun (Subtract Line 4 from 5 and Enter Overrun. If line 5 less than line 4, enter 0.)		0:00	\$ -
Total Liquidated Damages (Substantial + Final Completion)			\$ -

CONTRACTOR'S AFFIDAVIT	ARCHITECT- ENGINEER CERTIFICATE	DEPARTMENT'S CERTIFICATE
I solemnly swear (or affirm): That the work under the above named contract and all amendments thereto have been satisfactorily completed; that all amounts payable for materials, labor and other charges attributable to the project have been paid; that no liens have been attached against the project; that no suits are pending by reason of work on the project under the contract; that all Workman's Compensation claims are covered by Workman's Compensation Insurance as required by law; and that all public liability claims are covered by insurance.	I CERTIFY that the work under the above contract has been satisfactorily completed on the date set forth in accordance with the terms of the contract.	I CERTIFY that the work on the above named project has been satisfactorily completed under the terms of the contract.
<i>Signature</i>	<i>Signature</i>	<i>Signature</i>
<i>Title</i>	<i>Title</i>	<i>Title</i>
<i>Date</i>	<i>Date</i>	<i>Date</i>
<i>Print Name</i>	<i>Print Name</i>	<i>Print Name</i>

STATE OF: _____
 COUNTY OF: _____
 The foregoing instrument was acknowledged before me this _____ day of _____
 by _____
(name & title of officer/agent)
 who is personally known to me or has produced _____ as identification.

(Notary signature)

(Notary name or stamp)

EXHIBIT G: CERTIFICATE OF PARTIAL PAYMENT (SAMPLE)



Florida Department of Agriculture and Consumer Services
 Division of Administration
 Bureau of General Services

NICOLE "NIKKI" FRIED
COMMISSIONER

CONTRACTOR'S REQUEST FOR PAYMENT

From:
 (Contractor)

Date From:
Date To:
Pay Request No:
FDACS Contract or PO No:
FDACS Complete Project Name:

To: (Project Manager)
 Florida Department of Agriculture and Consumer Services
 Division of Administration
 Bureau of General Services
 407 South Calhoun Street
 Tallahassee, Florida 32399

CHANGE ORDER SUMMARY		
Change Order totals previously approved by Owner	ADDITIONS	DEDUCTIONS
Total Approved this Request		
Number	Date Approved	
CURRENT TOTALS	\$ -	\$ -
Net change by Change Orders	--	

CONTRACT AMOUNT SUMMARY	
1. Original Contract Sum	
2. Net Change by Change Orders	\$ -
3. CONTRACT SUM TO DATE (line 1 ± 2)	\$ -
4. Total Completed & Stored to Date (EARNED) <small>(column G on continuation sheet)</small>	\$ -
PERCENT COMPLETE _____	
5. Retainage:	
a. 10% WORK COMPLETED	\$ -
b. 10% STORED MATERIALS	\$ -
Total Retainage <small>(line 5a + 5b or total in column I on continuation sheet)</small>	\$ -
6. Total Earned Less Retainage <small>(line 4 less line 5)</small>	\$ -
7. Less Previous Billings <small>(line 6 from prior certificate)</small>	
8. CURRENT PAYMENT DUE	\$ -
9. Balance To Complete Including Retainage <small>(line 3 less line 6)</small>	\$ -

CONTRACT TIME SUMMARY	
Base Contract Calendar Days:	_____
Adjusted Days by Change Order:	_____
Revised Contract Days:	_____
Elapsed Days to Date:	_____
Net Days Remaining:	_____
Estimated Days Ahead (+) or Behind (-):	_____

CERTIFICATION BY THE CONTRACTOR: I certify that all items and amounts on this Application are correct, that all work has been performed and material supplied in full accordance with the terms and conditions of the Contract, and that all materialmen, laborers and subcontractors, as defined in Chapter 713.01, Florida Statutes, have been paid the amounts due them out of any previous payments made to the contractor by the Owner. Further, I agree to promptly pay each materialmen, laborer and subcontractor, as defined in Chapter 713.01, Florida Statutes, upon receipt of payment from the Owner, out of the amount paid to me on, account of such materialman's laborer's or subcontractor's work, the amount to which said materialman, laborer and subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to myself on account of such materialman's, laborer's and subcontractor's work.

CONTRACTOR

(Signature)

(Title, company name, date)

ARCHITECT- ENGINEER CERTIFICATE FOR PAYMENT	APPROVED
I certify that I have investigated and verified this Progress Payment Application; that to the best of my knowledge and belief, the above application is a true statement of the value of the work performed and the materials suitable stored on the site; that all work and materials included in this Certificate have been observed by me or by my authorized assistants; that all work has been performed and material supplied in full accordance with the terms of this Contract; and I approve for payment the amount noted above.	Contract Manager verification of payment for:
Signature of Architect/Engineer _____ Date _____	Signature of Division Contract Manager _____ Date _____
Print Architect/Engineer Name _____	(Print Division Contract Manager Name) _____

EXHIBIT H: CLOSEOUT DOCUMENTATION CHECKLIST (SAMPLE)



Florida Department of Agriculture and Consumer Services
 Division of Administration
 Bureau of General Services

NICOLE "NIKKI" FRIED
 COMMISSIONER

CLOSEOUT DOCUMENTATION CHECKLIST

For:
 (Contractor)

Date:
FDACS Contract or PO No:
FDACS Complete Project Name:
Substantial Completion Date:
Final Completion Date:

By: (Project Manager)
 Department of Agriculture and Consumer Services
 Division of Administration
 Bureau of General Services
 407 S. Calhoun St.
 Tallahassee, FL 32399

BONDED	NON-BONDED	ITEMS TO BE SUBMITTED ELECTRONICALLY WITH CONTRACTOR'S REQUEST FOR FINAL PAYMENT
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		CONTRACTOR PAY REQUEST FORM with CONTINUATION SHEET with original signatures and original seals, with pay request No. noted as " FINAL ". (FDACS 02022)
	N/A	Consent of Surety to make Final Payment, signed and sealed with Power of Attorney.
		Certificate of Occupancy or Certificate of Completion from Building Permit Authority.
		Certificate of Contract Completion (FDACS 01316).
		Contractor's Warranty for ___ year(s) from the date of Substantial Completion SIGNED & DATED. **
		Approved by the A/E: as-built plans, manuals, shop drawings, and brochures, SIGNED & DATED.
		Prime Contractor & List of Subcontractors, with contact information.
		Contractor certification that FDACS personnel have been trained in the operation and maintenance of the new products/ equipment for each system: HVAC, controls, fire alarm, electrical, plumbing, irrigation, etc.
		Fully executed Manufacturer's product warranties in the Owner's name, SIGNED & DATED. **
		Closed permits, RFIs, submittals, transmittals, materials testing reports, MFR inspections and O&M manuals
		Contractor Certification of Asbestos-free materials (FDACS 01292).
		Notice of Release of Lien from each trade contractor which filed a Notice To Owner.
		Completed punch list, signed by A/E.
		Contractor letter scheduling walk-thru at ___ Yr ___ Mo after Substantial Completion for any potential warranty issues, SIGNED & DATED.

*Provide attic stock of building materials to Owner as required per the specifications and contract documents.

**Submit (2) hard copies of original warranty documents in addition to electronic copies.

FDACS Internal use - Contract Manager to complete.

		For proper insurance coverage, and designation of new inventory number, email brief project summary/cost to FDACS Property Custodian in Finance & Accounting Division, Property Section <u>and</u> to the Client Division Property Mgr. (AP&P 4-23 V.C.1.f.)
		Transmit a copy of Certificate of Occupancy to Facilities Management. (AP&P 4-23 V.C.1.e.)

All items required for Fiscal & Programmatic reconciliation to be kept in permanent file. PROJECT DOCUMENTS = 1 copy Client + 1 copy General Services.

EXHIBIT J: CHANGE ORDER REQUEST (SAMPLE)



Florida Department of Agriculture and Consumer Services
 Division of Administration
 Bureau of General Services

NICOLE "NIKKI" FRIED
COMMISSIONER

CHANGE ORDER REQUEST

From:

(Contractor)

To:

(Project Manager)
 Florida Department of Agriculture and Consumer Services
 Division of Administration
 Bureau of General Services
 407 South Calhoun Street
 Tallahassee, Florida 32399

Date From:
Date To:
Change Order No:
FDACS Contract or PO No:
FDACS Complete Project Name:

The Contract is changed as follows:

DESCRIPTION OF CHANGE (Attach additional pages if required)	Decrease	Increase
Subtotal	\$ -	\$ -
Total Net Add/(Deduct)		

Contract Time				Contract Amounts	
	Days	SUBSTANTIAL COMPLETION	FINAL COMPLETION		
Original Contract Period				Original Contract Sum	\$ -
Contract Period Prior To This CO				Net Change By Previous Approved CO	
Change Requested Add/(Deduct)				Contract Sum Prior To This CO	\$ -
New Contract Period Including This CO				This CO Add/(Deduct)	\$ -
				New Contract Sum Including This CO	\$ -

This Change Order Request will become an Amendment to the Contract Agreement between Contractor and the Owner, and all contract provisions apply unless specifically exempted. The amount and time change designated are the maximum agreed to by both the Owner and the Contractor for change. In consideration of the foregoing adjustments in contract time and contract sum, the Contractor hereby releases Owner from all claims, demand causes of action arising out of the transactions, events and occurrences giving rise to this Change Order. Except as provided by this Change Order, contract remains in full force and effect.

CONTRACTOR	FLORIDA DEPARTMENT OF AGRICULTURE & CONSUMER SERVICE
<i>Signature</i>	<i>Signature</i>
<i>Print Name</i>	<i>Project Manager</i>
<i>Date</i>	<i>Date</i>

EXHIBIT K: CONTRACTOR'S STATUS REPORT OF MINORITY & DISABLED VETERANS BUSINESS ENTERPRISE (SAMPLE)

Contractor (Company Name, Street Address, City & Zip Code)				Project Number				
				Project Name				
Contract Amount \$0.00								
MBE Participation Amount: \$0.00		MBE Percentage						
DV Participation Amount: \$0.00		DV Percentage			Contractor's RUSH Partial Payment #		0	Date mm/dd/yy
MINORITY BUSINESS ENTERPRISE (MBE)								
* Include consultants, sub-consultants, surveyors, soils testing companies, blueprint shops, travel agents, etc. who provide services on this project.								
* Minority Business Enterprise	Description	** MBE Status	State Certified MBE (Yes or No)	MBE Contract \$ Amount	\$ Amount this Invoice	Total Paid	Balance Due	Project Type (State or Agency)
							\$ -	
							\$ -	
					\$ -	\$ -	\$ -	
TOTALS				\$ -	\$ -	\$ -	\$ -	
** Certified MBE: H - African <u>American_I</u> - Hispanic J - Asian/Hawaiian K - Native American M - American Women W - Service-Disabled Veteran Business								
Non-Certified MBE: N - African <u>American_O</u> - Hispanic P - Asian/Hawaiian Q - Native American R - American Women Y - Service-Disabled Veteran Business								
SERVICE DISABLED VETERANS (DV) BUSINESS ENTERPRISE								
* Include consultants, sub-consultants, surveyors, soils testing companies, blueprint shops, travel agents, etc. who provide services on this project.								
* Service Disabled Veteran's Business Enterprise	Description	Certified DV Business "W" (Yes or No)	Non-Certified DV Business "Y" (Yes or No)	DV Contract \$ Amount	\$ Amount this Invoice	Total Paid	Balance Due	Project Type (Local Govt., Govt. or State)
					\$ -	\$ -	\$ -	
				\$ -	\$ -	\$ -	\$ -	
				\$ -	\$ -	\$ -	\$ -	
TOTALS				\$ -	\$ -	\$ -	\$ -	