

BUILDING CONSTRUCTION AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

OWNER:

Palm Beach State College

4200 Congress Avenue

Lake Worth, FL 33461

CONSTRUCTION MANAGER:

Date

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**FORM OF BUILDING CONSTRUCTION AGREEMENT BETWEEN OWNER AND
CONSTRUCTION MANAGER AT RISK**

THIS Building Construction Agreement Between Owner and Construction Manager at Risk ("AGREEMENT") made this _____ day of _____ in the year _____ by and between the District Board of Trustees of Palm Beach State College, hereinafter called the Owner, and the Construction Manager at Risk

hereinafter called the Construction Manager.

ARTICLE 1 - THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT

The Construction Manager accepts the relationship of trust and confidence established between him and the Owner by this Agreement. He covenants with the Owner to furnish his best skill and judgment and to cooperate with the Owner, Architect-Engineer or any other Owner representative in furthering the interests of the Owner. He agrees to furnish efficient business administration and superintendence and use his best efforts to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner, applicable building code, best construction practice and the laws of the State of Florida.

1.1 The Construction Team

The Construction Manager, the Owner and the Architect-Engineer, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The Architect-Engineer will provide leadership during the Pre-construction Phase with support from the Construction Manager and the Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.

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

1.2 Extent of Agreement

This Agreement for _____ between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. When drawings, specifications and other descriptive documents defining the Work to be included under a construction authorization are substantially complete, they shall be identified in the construction authorization issued by the Manager of Facilities Planning. When drawings, specifications and other descriptive documents defining the Work to be included in the guaranteed maximum price (GMP) are sufficiently complete, an Amendment to the Agreement shall be signed by the Owner and Construction Manager, acknowledging the GMP amount and schedule, and the drawings, specifications and other descriptive documents upon which the GMP is based. To expedite the preparation of this GMP Amendment by the Owner, the Construction Manager shall obtain three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based from the Architect-Engineer, shall acknowledge on the face of each document of each set that it is the set upon which he based his GMP and shall send one set of the documents to the Owner's Contracts Administrator along with his GMP proposal, while keeping one set for himself and returning one set to the Architect-Engineer. The GMP Proposal shall include the following sections:

- Section One: Summary of Work*
- Section Two: GMP Price Summary – To include Construction Authorization & Tax Savings*
- Section Three: Scope Clarifications and Assumptions*
- Section Four: Detailed Estimate*
- Section Five: Bid Tabulations and Recommendations*
- Section Six: Preliminary Construction Schedule*
- Section Seven: Contract Documents – Drawing List and Specification List*

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 Construction Manager.

1.3 Definitions:

(1) Architect-Engineer– _____

- (2) Construction Authorization – The term Construction Authorization shall mean a written work order based on a defined scope of Work including Construction Managers fees as specified in Article 8, prepared by the Manager of Facilities Planning and issued to the Construction Manager. Construction Authorizations shall be used prior to the date of the GMP Amendment and all Work performed pursuant to Construction Authorizations shall be included in the GMP
- (3) Construction Manager – _____
- (4) Estimate - The Construction Manager's latest estimate of probable project construction cost.
- (5) Owner - Palm Beach State College, acting through its Manager of Facilities Planning or those persons designated by the Manager of Facilities Planning to act in his behalf, as Agent for Palm Beach State College pursuant to the Client agreement dated _____. The entity that will occupy, use and own the Project upon substantial completion is the Palm Beach State College. The funds with which the compensation of the architects, engineers, Construction Managers, etc. will be paid are under the control of Palm Beach State College, based on approval of each payment by Owner. All duties of Owner hereinafter shall be performed by the Manager of Facilities Planning
- (6) Owner's Representatives - The Manager of Facilities Planning and his supervisors or authorized designees.
- (7) Permitting Authority - The Permitting Section, Facilities Planning Department of Palm Beach State College, 4200 Congress Avenue, Lake Worth, Florida 33461-4796, Telephone (561) 868-3486. The Permitting Section issues building permits and is responsible for code inspections on projects administered by the Owner.
- (8) Project - The Project is the total Work to be performed under this Agreement. The Project consists of construction for project description as set forth here and in the plans and specifications for the Project listed on GMP Amendment.
- (9) Manager of Facilities Planning - The person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. (See Exhibit A)

1.4 Owner's Construction Budget:

The Owner's Construction Budget is identified in Exhibit B, including all Construction Manager fees, costs of the Work and the Owner's and Construction Manager's construction and interface contingencies as defined in Articles 8 and 9. This acknowledgement of the Owner's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 7.

ARTICLE 2 - CONSTRUCTION MANAGER'S SERVICES

The services which the Construction Manager shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

2.1 Project Management Information Systems (PMIS)

2.1.1 General:

- (1) Commencing immediately after contract award, the Construction Manager shall implement and shall utilize throughout the life of this Contract all subsystems of the Project Management Information System hereinafter referred to as PMIS.
- (2) The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the Work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the Architect-Engineer monthly and shall accompany each pay request.
- (3) If requested by the Manager of Facilities Planning, the Construction Manager shall conduct a comprehensive workshop at the College for participants designated by the Manager of Facilities Planning and additional seminars as required to provide instruction. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the Owner and the Architect-Engineer, procedures for accomplishing the management control aspect of the Project.
- (4) The PMIS shall be described in terms of the following major subsystems and shall be provided monthly or as otherwise requested by the owner:
 - (a) Narrative Reporting,
 - (b) Schedule Control,
 - (c) Cost Control, and estimating,
 - (d) Project Accounting,
 - (e) Accounting and Payment, and
 - (f) Action Reports.

2.1.2 Narrative Reporting Subsystem

- (1) The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8 1/2" X 11" format.
- (2) The Narrative Reporting Subsystem shall include the following reports:
 - (a) A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by Owner's Permitting Authority.
 - (b) A Monthly Cost Narrative describing the current construction cost estimate status of the Project.
 - (c) A Monthly Scheduling Narrative summarizing the current status of the overall project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
 - (d) A Monthly Accounting Narrative describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
 - (e) A Monthly Construction Progress Report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations, and plans for the succeeding month.
 - (f) A Daily Construction Diary during the construction phase describing events and conditions on the site.

- (g) A monthly Minority Business Enterprise (MBE) report during the construction phase summarizing the participation of certified minority subcontractors/material suppliers for the current month, and project to date. The report shall include the names, addresses, and dollar amount of each certified MBE participant.
 - (h) A Contractor's Minority Business Enterprises Status Report of Partial Payment form is attached to this Agreement as Exhibit M and is to be completed and submitted with each pay request.
 - (i) Construction Manager shall implement a monthly direct purchase sales tax savings report issued to the Owner that, upon acceptance, will be part of the Construction Manager's services.
 - (j) The Monthly Construction Progress Report shall include a summary of the Construction Manager's effort to date in employing apprentices and/or interns of the Project.
- (3) The reports outlined in subsection (2)(a) through (j) above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and the Architect-Engineer and others designated by the Manager of Facilities Planning with the monthly pay requisition.

Additional copies of the report outlined in subsection (2)(a) shall be bound separately and distributed monthly as directed by the Manager of Facilities Planning.

- (4) The report outlined in subsection (2)(f) above shall be maintained at the site available to the Owner and Architect-Engineer. A copy, bound, of the complete diary shall be submitted to the Owner at the conclusion of the Project.

2.1.3 Scheduled Control Subsystem

- (1) Master Project Schedule - Upon award of this Agreement, the Construction Team shall submit a master project schedule covering the planning and design approvals, construction and Owner occupancy of the Project. This schedule will serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be produced and updated monthly throughout the Project.
- (2) Construction Schedule And Requirements For Overtime Work For Projects With Construction Costs In Excess of \$5,000,000.00 Within thirty (30) days after the date of the Owner's issuance of a Notice to Proceed, the Construction Manager shall prepare and submit to the Architect-Engineer a construction schedule in quadruplicate graphically depicting the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. Failure of the Construction Manager to develop and submit a construction schedule as aforesaid shall, after notice and an opportunity to cure, be sufficient grounds for the Architect-Engineer to find the Construction Manager in substantial default and certify to the Owner that sufficient cause exists to terminate the Agreement or to withhold any payment. The construction schedule will be confirmed in the GMP Amendment.

Following development and submittal of the construction schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the subject project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or will affect the progress of the performance of the Work yet to be performed in contrast with the planned progress of performance of such Work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. Each such update and/or revision to the construction schedule shall be submitted to the Architect-Engineer in duplicate. Failure of the Construction Manager to update, revise, and submit the construction schedule as aforesaid shall, after notice and an opportunity to cure, be sufficient grounds for the Architect-Engineer to find the Construction Manager in substantial default and certify to the Owner that sufficient cause exists to terminate the Agreement or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Architect-Engineer is submitted.

- (3) The Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:
 - (a) Pre-Bid Schedules (Subnetworks) - The Construction Manager shall prepare a construction schedule for Work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It shall show the interrelationships between the Work of the successful bidder and that of other subcontractors and shall establish milestones keyed to the overall master schedule.
 - (b) Subcontractor Construction Schedules (Subnetworks) - Upon the award of each sub-contract, the Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.
 - (c) Occupancy Schedule - The Construction Manager shall jointly develop with the Architect-Engineer and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

2.1.4 Cost Control Subsystem

The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other Project costs, will not exceed the maximum total Project budget or GMP whichever is less. Requirements of this subsystem include the following submissions at the following phases of the Project:

Estimates

- (a) At completion of Advanced Schematic Preconstruction Phase For Each Item Or Bid Package.
- (b) At Completion of Design Development Phase For Each Item Or Bid Package.
- (c) At Completion of 100% Construction Documents Phase For Each Item Or Bid Package.
- (d) At establishment of the Guaranteed Maximum Price.
- (e) Construction Documents Estimates - Prior to the bid of each bid package, when the working drawings and specifications are complete, the Construction Manager shall prepare and submit a cost estimate on the basis of a quantitative material take-off with current local cost for each bid group by subcontract package.

2.1.5 Project Accounting Subsystem

The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the Project, cash flow, costs, change orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. This subsystem will be produced and updated monthly and includes the following reports which together will serve as a basic accounting tool and an audit trail. The Construction Manager will retain all Project files in a manner consistent with proper accounting procedures that would be sufficient for an audit by the Owner for a period of 5 years after final completion of the Project. This report will also provide for accounting by building and site element.

- (a) Costs Status Report presenting the budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the Work.

- (b) A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
- (c) A Detailed Status Report showing the complete activity history of each item in the project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.
- (d) A Cash Flow Diagram showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
- (e) A Job Ledger shall be maintained as necessary to supplement the operation of the project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, direct cost items, and costs requiring accounting needs.

2.2 Project Manual

- (1) Upon award of contract the Construction Manager shall develop a draft comprehensive Project Manual describing the services set forth in this Agreement. This shall provide a plan for the control, direction, coordination and evaluation of Work performed throughout the Project organization including identification of Key personnel, responsibilities of Construction Manager, Owner and Architect-Engineer; workflow diagrams; and strategy for bidding the Work. The Project Manual shall be updated as necessary throughout the design, construction and Owner occupancy phases. Five copies of the Project Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the Owner and the Architect-Engineer.
- (2) Contents of Project Manual - The Project Manual shall describe in detail the procedures for executing the Work and the organizations participating. The Project Manual shall include as a minimum the following sections:
 - (a) Project Definition - The known characteristics of the Project or subprojects shall be described in general terms which will provide the participants a basic understanding of the project or sub-projects.
 - (b) Project Goals - The schedule, budget, physical, technical and other objectives for the Project shall be defined.
 - (c) Project Strategy - A narrative description of the project delivery methods shall be utilized to accomplish the Project goals.
 - (d) Project Work Plan - A matrix display of the program of Work to be performed by the Construction Manager, the Architect-Engineer and the Owner during each phase of the Project.
 - (e) Project Organization - A summary organization chart showing the interrelationships between the Owner, the Construction Manager and the Architect-Engineer, and other supporting organizations and permitting review agencies. Detailed charts, one each for the Construction Manager, the Architect-Engineer, the Using Agency and Owner showing organizational elements participating in the Project shall be included.
 - (f) Responsibility Performance Chart - A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Architect-Engineer, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the Project. The Construction Manager shall develop a similar chart for the personnel within his own organization who are assigned to the Project, and also for the personnel of the Owner and the Architect-Engineer from data supplied by each.
 - (g) Flow Diagrams - These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress payments and change orders.

- (h) Written Procedures - The Construction Manager will provide written procedures for communications and coordination required between Construction Team members throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications and will comply communication requirements noted in PBSC's General Conditions for Construction Contracts. All relevant portions are incorporated herein.

2.3 Design Review And Recommendations

- (1) Review Recommendations and Warranty. - The Construction Manager shall familiarize himself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications and shall follow the development of design from Preliminaries through Working Drawings. He shall, in his capacity as a construction manager and not as a design professional (and thus shall not assume any liability or responsibility for architectural or engineering errors or omissions), make recommendations with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the Architect-Engineer, and Owner in evaluating alternative comparisons versus long term cost effects based on data prepared by Owner's design professionals. The evaluation shall speak to the benefits of the speed of erection and early completion of the Project. He shall furnish pertinent information as to the availability of materials and labor that will be required. He shall submit to the Owner, the Owner's Permitting Authority and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. He shall call to the Manager of Facilities Planning and the Architect-Engineer's attention any apparent defects in the design, drawings and specifications or other documents that he may discover. He shall prepare an estimate of the construction cost in accordance with Section 2.1.4.
- (2) Review Reports and Warranty - Within 21 calendar days, or as appropriate to the scope of the project after receiving the Construction Documents for each phase of the Project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph (1) above and on factors set out in Paragraph (5). Promptly after completion of the review, he shall submit to the Manager of Facilities Planning and the Owner's Permitting Authority, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as he may deem appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments he may deem to be appropriate with respect to separating the Work into separate contracts, alternative materials, and all comments called for under Article 2.3(5).

AT COMPLETION OF THE CONSTRUCTION MANAGER'S REVIEW OF THE PLANS AND SPECIFICATIONS, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED BY APPROPRIATE COMMENTS PURSUANT TO THIS SECTION, THE CONSTRUCTION MANAGER SHALL WARRANT, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.

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

- (3) Long Lead Procurements - The Construction Manager shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the Construction Manager shall notify the subcontractors, the Manager of Facilities Planning and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the Architect-Engineer has completed drawings and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall prepare invitations for bids. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Manager of Facilities Planning, Owner and Architect-Engineer of any problems or prospective delay in delivery.

- (4) Separate Contracts Planning - The Construction Manager shall review the design with the Architect-Engineer and make recommendations to the Owner and to the Architect-Engineer with respect to dividing the Work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. He shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, State relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.
- (5) Interfacing
- (a) The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, and that subcontracts are sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the Work included in that particular separate subcontract; its schedule for start and completion and its relationship to other separate Construction Managers.
- (b) Without assuming any Design responsibilities of the Architect-Engineer, the Construction Manager shall include in any reports required under Article 2.3(2) comments on identified overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Manager of Facilities Planning and Architect-Engineer may arrange for necessary corrections.
- (6) Job-Site Facilities - The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager and the Owner's representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction.

Tangible personal property otherwise referred to as Job-Site facilities, include but are not limited to such things as trailers, toilets, fax machines, computers and any other equipment necessary to carry on the Project. The method of acquiring such job-site facilities, which are planned to become the property of the Owner at the conclusion of the Project, shall be evaluated based on cost over the life of the Project. Owning versus leasing shall be considered by the Construction Manager obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usage life of the item. The Construction Manager shall present his evaluation with recommendation to the owner for approval.

When the Construction Manager wishes to supply Job-Site Facilities from his own equipment pool, he shall first evaluate buy versus lease as discussed in the paragraph above. If leasing is found to be the least expensive approach, then he may lease such Job-Site Facilities from his own equipment pool at a price not greater than the lowest of any lease proposals obtained. The Owner shall retain the right to supply any of the items directly for the temporary use of the Construction Manager during the contract period.

For all such facilities purchased which Owner and Construction Manager agree in the GMP Amendment will become the property of the Owner at the conclusion of the Project, the Construction Manager shall maintain ownership responsibilities of such facilities until the Project conclusion. Reimbursement for cost of such equipment will be made by agreement in the GMP Amendment on a lease rate during the Project that, spread over the duration of the Project, is equal to the cost of the facilities and cost of capital thereon. At that time, the Construction Manager shall provide the Owner with a complete inventory for each unit of equipment. The inventory shall describe the equipment and identify the purchase price, serial number, model number and condition. Where said equipment has a title, said title shall be properly transferred to the Owner or to his designee.

The Construction Manager is responsible for proper care and maintenance of all equipment while in his control. At the time of transfer to the Owner, the Owner may refuse acceptance of the equipment if the Owner determines in its sole discretion that the Construction Manager has not properly cared for the equipment or that such acquisition would not otherwise be in the best interest of the Owner. In such event, the Construction Manager will be reimbursed for such item in accordance with Article 9.2(4) hereof.

- (7) Weather Protection - The Construction Manager shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work in periods when extreme weather conditions are likely to be experienced. He shall submit to the Construction Team his recommendations as to needed requirements of this nature and as to the contract or contracts in which they should be included.
- (8) Market Analysis and Stimulation of Bidder Interest
 - (a) The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project; he shall make analysis as necessary to (1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (2) in light of such determinations, make recommendations as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of Work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.
 - (b) Within 30 days after receiving Notice to Proceed, the Construction Manager shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. This report shall include the contractor's estimated percentage of MBE/WBE involvement and an outline of what specific efforts will be used to insure that this objective can be met. As various bid packages are prepared for bidding, the Construction Manager shall submit to the Manager of Facilities Planning and the Architect-Engineer a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.
 - (c) The Construction Manager shall carry out an active program of stimulating interest of qualified Construction Managers in bidding on the Work and of familiarizing those bidders with the requirements of this Project.

2.4 Construction Phase

- (1) Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the subcontractors and he shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "C" to this agreement. He shall not change any of those persons named in Exhibit "C" unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.
- (2) Lines of Authority - The Construction Manager shall establish and maintain lines of authority for this personnel, and shall provide this definition to the Owner and all other affected parties such as the code inspectors of the Owner's 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 Construction Manager and his subcontractors; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor.
- (3) Schedule and Project Manual Provisions - The Construction Manager shall provide subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the Project Manual (total number of copies not to exceed 10) developed and updated as required by Article 2.2 expanded for the Construction Phase 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. He 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 Construction Manager's Work to the Work of his 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. He shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meeting or inspection giving each reasonable advance notice unless such notice is made impossible by conditions beyond his control. He shall hold job-site meetings at least once each month with the Construction Team and at least once each week with the

subcontractors and the Architect-Engineer's Field Representative, or more frequently as required by Work progress, to review progress, discuss problems and their solutions and coordinate future Work with all subcontractors.

(4) Solicitation of Bids

(a) Without assuming responsibilities of the Architect-Engineer, and unless waived in writing by the Owner, the Construction Manager shall prepare invitations for bids, or requests for proposal when applicable, for all procurements of long lead items, materials, services, site utilities and for Subcontractor contracts. Construction Manager is responsible for knowing and shall comply with all Florida Statutes and Florida law for all solicitations. Construction Manager shall obtain prior approval from the College on all solicitations and College will be advised of any subsequent changes thereto. Specifically; but not exclusively, invitations for bids shall be prepared in accordance with the following guidelines:

1. Contracts over \$1,000 but not exceeding \$10,000 may be entered into by the Construction Manager with the firm, which submits the lowest verbal quotation. The Construction Manager shall obtain a minimum of two (2) verbal quotations. These quotations shall be entered on a bid tabulation sheet and a copy of such tabulation sent to the Owner and Architect-Engineer. The successful quotation shall be confirmed by written contract or purchase order to the low bid firm defining the scope and quality of Work to be provided.
2. Contracts exceeding \$10,000 but not exceeding \$200,000 may be entered into by the Construction Manager with the firm who is qualified and submits the lowest responsive proposal. The Construction Manager shall request at least three (3) firms to submit sealed written proposals based on a written drawings and/or specification. The written proposals shall all be opened publicly at the location, date and time named by the Construction Manager in his request for proposal. A tabulation of the results shall be furnished to the Owner, Architect-Engineer and to each firm.
3. Contracts exceeding \$200,000 will be discussed with the College and the College reserves the right to directly solicit these proposals. Otherwise, upon receiving written authorization from the College, Contractor may proceed as described herein.
4. Site utilities may be acquired at market rates from the entity(ies) providing such in the franchise area.

(b) As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Manager of Facilities Planning and Architect-Engineer in written form.

(c) For each separate construction contract exceeding \$25,000, the Construction Manager shall, unless waived by Owner, conduct a pre-bid conference with prospective bidders, the Architect-Engineer and Manager of Facilities Planning. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

(d) For all contracts exceeding \$25,000, the Construction Manager shall, with the College, establish a pre-qualification procedure for applicable subcontract trades.

(e) After each subcontract bid is taken and awarded, the Construction Manager will provide the Owner's Purchasing Director a complete summary of the subcontract bid documents. At a minimum, this will include the Advertisement for Bid, a copy of the Bid Documents, a copy of all proposals received, a copy of the Construction Manager's Bid Tabulation, and a copy of the Subcontract Award.

(5) Bonds - In accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner a 100% Performance Bond and a 100% Labor and Material Payment Bond each in an amount equal to the total construction cost as defined in Article 9 and inclusive of the Construction Manager'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:

In case of default on the part of the contractor, all expenses incident to ascertaining and collecting losses under the bond, including both architectural and legal services, shall lie against the bond.

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

<u>CONTRACT AMOUNT</u>	<u>POLICY HOLDER'S RATING</u>	<u>REQUIRED FINANCIAL RATING</u>
\$ 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 (10) percent of its surplus to policyholders, provided:
 - (a) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.
 - (b) 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.
- (6) Quality Control - The Construction Manager shall develop and maintain a program, acceptable to the Owner and Architect-Engineer, to assure quality control of the construction. He 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 he shall continue to exert his influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should disagreement occur between the Construction Manager and 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.
- (7) Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives. He shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals. The e Architect-Engineer shall verify the validity and reasonableness of this process, acting in the Owner's best interest prior to Construction Manager 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 Construction Manager shall act immediately to remove the threat to health and safety. He shall also carefully review all shop drawings and then forward the same to the Architect-Engineer for review and action. The Architect-

Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. He shall request the Architect-Engineer to make interpretations of the drawings or specifications requested of him by the subcontractors and shall maintain a suspense control system to promote timely response. He shall advise the Manager of Facilities Planning and Architect-Engineer when timely response is not occurring on any of the above.

- (8) Permits - The Construction Manager shall secure all necessary building permits from the PBSC Building Department at no cost to Construction Manager and all other necessary utility connection permits, the cost of which will be considered a direct cost item.
- (9) Job Site Requirements
- (a) The Construction Manager shall provide for each of the following activities as a part of his Construction Phase fee:
1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
 2. Maintain a roster of companies on the Project with names and telephone numbers of key personnel.
 3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 4. Provide labor relations management for a harmonious, productive Project.
 5. 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.
 6. Provide a quality control program as developed under Article 2.4(6) hereinabove.
 7. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.
 8. Travel to and from his home office to the Project site as the Project requires.
 9. Schedule for all required testing by testing lab under contract with owner (reference 3.4 (2))
- (b) The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontracts to provide printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.
- (10) Job Site Administration - The Construction Manager shall provide as part of his construction phase fee, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:
- (a) 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 direct tax saving purchases and 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, owner and Construction Manager either biweekly or monthly, whichever is designated by the Manager of Facilities Planning.
- 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.

- (b) 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.
- (c) 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.
- (d) Payments to subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments, including verification and certification of work completed, incorporated or materials satisfactorily stored on site by the Architect-Engineer.
- (e) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer, maintain a log of all such request and report to owner any unnecessary delay in the response.
- (f) Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the Owner and the Architect-Engineer including information on the subcontractor's Work, and the percentage of completion as verified and certified by the Architect-Engineer. Keep a daily log available to the Owner, the Architect-Engineer and the Owner's Permitting Authority inspectors.
- (g) Subcontractor's Progress - Prepare periodic punch lists for subcontractor's Work including unsatisfactory or incomplete items and schedules for their completion.
- (h) Substantial Completion - Ascertain when the Work or designated portions thereof are ready for the 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 Construction Manager wishes the Architect-Engineer to conduct a pre-substantial completion inspection in conjunction with his own forces, the Architect-Engineer will prepare the pre-substantial punch list from which the Construction Manager will develop a completion schedule. The Architect-Engineer will issue a certificate of substantial completion when the work on his pre-substantial punch list has been accomplished (See Exhibit D).
- (i) 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 ("As Built"), and maintenance books including the Final Completion form shown in Exhibit E.
- (j) 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 sub-contractors.
- (k) Record Drawings - During the progress of the Work, the Construction Manager shall require the plumbing, 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 Construction Manager 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 Construction Manager 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 Construction Manager shall furnish true elevations and locations, all properly referenced by using the original bench mark used for the institution or for this Project

- (11) Administrative Records - The Construction Manager will maintain at the Project site, unless agreed to otherwise by the Manager of Facilities Planning, on a current basis, files and records such as, but not limited to the following:

- Contracts or Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs-
- Contract Drawings and Specifications with Addenda
- Warranties and Guarantees
- Cost Accounting Records:
 - Sales Tax Recovery Status Report
 - Labor Costs
 - Material Costs
- Subcontractor Payment Exception Report
- Equipment Costs
- Cost Proposal Requests
- Payment Request Records
- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Purchase Orders
- Material Purchase Delivery Logs
- Technical Standards
- Design Handbooks
- "As-Built" Marked Prints
- Operating & Maintenance Instruction
- Daily Progress Reports
- Monthly Progress Reports
- Correspondence Files
- Transmittal Records
- Inspection Reports
- Bid/Award Information
- Bid Analysis and Negotiations
- Punch Lists
- PMIS Schedule and Updates
- Suspense (Tickler) Files of Outstanding Requirements
- Project Manual
- Correspondence to and from all subcontractors

The Project records shall be available at all times to the Owner and Architect-Engineer for good cause.

- (12) Owner Occupancy - The Construction Manager shall provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the Project. He shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the Work, as completed by the subcontractors or the Construction Manager, "on line" in accordance with the plans and specifications as will satisfy owner operational requirements.

He shall conduct the Construction Manager's preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.

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

He 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.

He 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 2.4(10)h, 2.4(10)j, 2.4(10)k, and 2.4(13) have been completed to the Owner's satisfaction excluding the requirements for a warranty inspection nine months after Owner Occupancy.

- (13) **Warranty** - Where any Work is performed by the Construction Manager's own forces or by subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in 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. Such warranty shall commence upon the Date of Substantial Completion of the entire Work and continue for 12 months thereafter. With respect to the same Work, the Construction Manager 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 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 Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. Also, the Construction Manager shall conduct, jointly with the Owner and the Architect-Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy.

ARTICLE 3 - OWNER'S RESPONSIBILITIES

3.1 Owner's Information

The Owner shall provide full information regarding his 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 Project. He shall render decisions promptly and furnish information expeditiously.

3.3 Architect and Engineer's Agreement

The Owner shall retain an Architect-Engineer for design and to prepare construction documents for the Project. The Architect-Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect-Engineer, a copy of which will be furnished to the Construction Manager. The Agreement between the Owner and the Architect-Engineer shall not be modified without written notification to the Construction Manager.

3.4 Site Survey and Reports

- (1) 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.
- (2) Retain the services of independent testing laboratories to provide the necessary testing of materials to ensure conformance to contract requirements.

3.5 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.

3.6 Legal Services

The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3.5 and such auditing services as he may require.

3.7 Drawings and Specifications

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

3.8 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 Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

3.9 Project Fault Defects

If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, he shall give prompt written notice thereof to the Construction Manager and Architect-Engineer.

3.10 Funding

The Owner shall furnish in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project. The Construction Manager 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 subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining Project schedules and quality.

3.12 Lines of Authority

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

3.13 Permitting & Code Inspections

The PBSC Building Department is the recognized Owner's Permitting Authority and requires the Construction Manager to schedule inspections through their office.

ARTICLE 4 - PERMITTING AND INSPECTION

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

4.1 Building Permits

The Construction Manager shall provide the following information to the Owner's Permitting Authority and obtain approval from the Owner's Permitting Authority prior to beginning construction:

- (1) Two (2) sets of documents, signed, sealed and dated by the Architect-Engineer, with all addenda enclosed with each set. These documents may be sent to the Permitting Authority prior to sending the Building Permit Application addressed in 4.1(2) hereinafter.
- (2) The completed Palm Beach State College Building Permit Application Form attached as Exhibit F.

The above items shall be sent to "Permitting Section, Palm Beach State College, 4200 Congress Ave, Lake Worth, FL 33461-4796".

4.2 Code Inspections

All projects require detailed code compliance inspections during construction in disciplines determined by the Owner's Permitting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building.

Inspection personnel will be provided by the Owner's Permitting Authority at Owner's cost. Names, addresses, and phone numbers of the inspector(s) will be provided to the Construction Manager by the Owner's Permitting Authority.

The Construction Manager shall notify the appropriate inspector(s), no less than 24 hours in advance, that the work is ready for inspection and before the work is covered up. Work not inspected and approved prior to cover-up shall be uncovered for inspection when directed by the Owner's Permitting Authority. All costs for uncovering and reconstruction shall be borne by the Construction Manager.

All inspections shall be made for conformance with the applicable building codes, compliance with drawings and specifications, and quality.

Cost for all re-inspections of work found defective and subsequently repaired shall be borne by the Construction Manager, provided, however, that because Construction Manager does not hereby assume the professional liability of any design professionals, Construction Manager has no liability arising from re-inspections and repairs to the extent required to correct code violations that are the result of design errors

or omissions, or design defects or omissions.

ARTICLE 5 - SUBCONTRACTS

5.1 Definition

A subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the Work at the site or perform materials needed for the Work. 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 9 and, in accordance with Article 2.4(4), the Construction Manager shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after he has reviewed each proposal and is satisfied that the subcontractor is qualified to perform the Work. Except as may be noted in a proposal, after the Construction Manager awards a contract to a subcontractor, that subcontractor is prohibited from assigning his responsibility for the Work of his subcontract to any other party without prior written approval of the Construction Manager and the Owner.

5.3 Required Subcontractors' Qualifications and Subcontract Conditions

5.3.1 Subcontractual Relations

By an appropriate written agreement, the Construction Manager shall require each subcontractor to the extent of the Work to be performed by the subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager by these Documents, assumes toward the Owner. Said agreements shall preserve and protect the rights of the Owner 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 Construction Manager shall require each Subcontractor to enter into similar agreements with his sub-subcontractor.

The Construction Manager shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents (which will be listed and defined in the GMP Amendment) 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

- (a) On all subcontracts where the bid exceeds \$50,000, the subcontractors may be required by the Construction Manager 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 Insurance. Construction Manager may alternatively use its "subguard" insurance program in lieu of bonds, provided, however, that the cost to Owner for any use of subguard will not exceed the cost of Subcontractors' and Suppliers' providing payment and performance bonds to Construction Manager.
- (b) On all subcontracts where the bid exceeds \$200,000.00, each Subcontractor bidder must submit complete experience and financial information as may be required by the Contractor. The Subcontractor's financial condition must demonstrate to Construction Manager's reasonable satisfaction that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.
- (c) Workforce - The subcontractor performing Work must agree to perform no less than 15% of its portion of the Project construction Work utilizing its own employees.
- (d) Subcontractor experience - The subcontractor must have successfully completed no less than two projects of similar size and complexity within the last five years.
- (e) 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 identified by him to supervise and schedule his Work.

(f) All subcontracts shall provide:

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

5.4 Responsibilities for Acts and Omissions

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

5.5 Subcontracts to be provided

The Construction Manager shall include a copy of each subcontract, including the general supplementary conditions, in the Project Manual.

ARTICLE 6 - SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

6.1 Project Substantial Completion Date, Project Final Completion Date & Owner Occupancy Date

6.1.1 At the time of the execution of the GMP Amendment, a project duration shall be determined and established.

6.1.2 A Project substantial completion date, a Project final completion date and an Owner Occupancy date for completion of the Project in accordance with the master Project schedule, shall also be established by the Construction Team and included in the GMP Amendment, and confirmed in the Notice to Proceed. The Construction Manager agrees to complete the construction in accordance with the agreed upon substantial completion date, final completion date and Owner Occupancy date, subject to extensions as set forth herein. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the GMP Amendment, subject to extensions as set forth herein, will result in substantial direct damages to the Owner, Construction Manager will substantially complete all work on this project on or before the date established for substantial completion, and should he fail to do so, he will pay the Owner for each and every day of such delay beyond the date of completion the sums specified below as agreed upon, liquidated damages, and not by way of penalty, in accordance with the schedule shown:

<u>CONTRACT SUM</u>	<u>LIQUIDATED DAMAGES</u>
-0- to \$100,000	\$150.00 per day
\$100,001 to \$250,000	\$200.00 per day
\$250,001 to \$500,000	\$300.00 per day
\$500,001 to \$1,000,000	\$400.00 per day
\$1,000,001 to \$2,500,000	\$500.00 per day
\$2,500,001 and over	\$600.00 per day

6.1.3 It is also hereby agreed that, if after Substantial Completion this project is not fully and finally completed in accordance with the requirements of the Contract Documents, the Contractor shall pay to the Owner as liquidated damages, and not as a penalty, for such delay, one-fourth (1/4) of the rate previously indicated. These liquidated damages shall be payable in addition to any expenses or costs payable by the Contractor to the Owner under the other provisions of this Agreement, but are the sole remedy for delays caused by Construction Manager or those for whom it is responsible. This Article does not, however, preclude Owner from recovering damages for any event other than delays, including costs arising from termination or latent defects in the Work.

6.2 Owner Occupancy And Warranties

The date of Owner Occupancy shall occur as described in Article 2.4(12) hereinabove. 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 - GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 Guaranteed Maximum Price (GMP) Proposal

When the Design Documents are sufficiently complete to establish the scope of Work for the Project, the Construction Manager will establish and submit in writing to the Owner for his approval a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner, for the construction cost. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provided in Article 10. However, the actual price paid for the Work by the Owner shall be the actual cost of all Work subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined under Article 9, plus the Construction Manager's fees under Article 8, or the GMP, as adjusted hereunder, whichever is less when the Work is complete. The GMP proposal will be effective for the period of time identified in the Proposal.

7.2 GMP Taxes

The GMP will only include those taxes in the cost of the Project, which are legally enacted at the time the GMP is established.

7.3 Adjustments In Contingency Contained Within GMP

When the Project is bid and 100% of the trade subcontracts have been executed, the contingency within the GMP may be decreased in proportion to the percent of the Work completed. In other words, if 10% of the Work has been completed and the Owner requests that the contingency within the GMP be adjusted, then 10% of the contingency within the GMP will be removed from the GMP by change order, unless Construction Manager shows good cause not to do so.

7.4 Use Of Contingency Contained Within GMP

At the time of submission of a Guaranteed Maximum Price, the Construction Manager will verify the time schedule for activities and Work, which were adopted by the Construction Team and used to determine the Construction Manager's GMP. In addition to the cost of Work and fee, a GMP will include an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses incurred by Contractor in performing the Work, due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. The Architect-Engineer shall verify the actual costs. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency, however such events shall not be cause to increase the GMP.

If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the Work as acknowledged by the Owner or negotiate for its performance for the specified line item lump sum amount or less. Any balance remaining at the end of the Construction Phase shall belong to the Owner.

ARTICLE 8 - CONSTRUCTION MANAGER'S FEE

8.1 Construction Manager's Fee

In consideration of the performance of the Agreement, the Owner agrees to pay the Construction Manager as compensation for his services, fees as set forth in Subparagraphs 8.1.1, 8.1.2 and 8.1.3.

8.1.1 Pre-construction Phase Fee

For the performance of the services set forth under paragraphs 2.1.3(l), 2.1.4(a)(b)(c)(d), 2.3(1) and 2.3(2) and for profit and overhead related to these services, a total fee of TBD. The Pre-construction Phase Fee shall be paid in TBD monthly payments of TBD each and a final monthly payment of TBD at completion of Pre-construction Phase Services. The first monthly payment shall become due thirty days following the issuance of Notice-To-Proceed for the Pre-construction Phase Services.

The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this Project and the duration of their assignments are shown on Exhibit G.

8.1.2 Construction Phase Fee

Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase. The Construction Manager's compensation for Work or services performed during the Construction Phase shall be as set forth in the GMP Amendment. (However, the Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Manager of Facilities Planning question the need for the employee or employees).

The Construction Phase Fee shall be invoiced and paid in monthly payments as set forth in the GMP Amendment. The first monthly payment shall become due thirty days following the issuance of the first Construction Authorization by the Manager of Facilities Planning and the final monthly payment shall be paid only 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.

Adjustments in Fee - For changes in the Project as provided in Article 10, the construction phase fee shall be adjusted as follows:

- (a) The Construction Manager shall be paid an additional fee subject to negotiation if the Construction Manager 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 Construction Manager.
- (b) Should the duration of the construction stipulated herein for Final Completion extend beyond the times set forth in the GMP Amendment due to no fault of the Construction Manager, the Construction Manager's Additional Construction Phase Fee will be an amount per working day, for each day or portion thereof, that will be set in the GMP Amendment. The Construction Manager's staff during such time extensions shall be that shown in Exhibit H.
- (c) The Construction Manager will not be due any additional Overhead and Profit under Article 8.1.4 on increases to the Guaranteed Maximum Price (GMP) until those increases cumulatively equal 10% of the GMP. Should the GMP be increased by more than 10% under the terms of Article 10 hereinafter due to no fault of the Construction Manager, the Construction Manager's additional Overhead and Profit for the Construction Phase will be 5% of that portion of the accumulative increases in the GMP that exceed the GMP by more than 10% of the GMP.

8.1.3 Costs and Expenses Included in Fee

The following are included in the Construction Manager's fee for services during the Construction Phase:

- (a) Salaries or other compensation of the Construction Manager's employees at his principal office and branch offices. Bonuses are not allowed as part of salaries or other compensation.

The Construction Manager's personnel to be assigned during the Construction Phase, their duties and responsibilities to this Project and the duration of their assignments are shown on Exhibits I and J. Bonuses are not allowed as part of salaries or other compensation.

- (b) General operating expenses related to this Project of the Construction Manager's principal and branch offices.

- (c) General operating expenses related to this project of the data processing staff.

- (d) Salaries or other compensation of the Construction Manager's employees at the job site. The Construction Manager's personnel to be assigned to the site during the Construction Phase under the job site management and supervision fee, their duties and responsibilities and the duration of their assignment are shown on Exhibit J.
- (e) General operating expenses incurred in the management and supervision of the Project, except as expressly included in Article 9.
- (f) Those services set forth in Article 2.4(9)(a).
- (g) Job office supplies - includes paper, pencils, paper clips, file folders, staples, etc., and janitorial supplies (photocopy or blue print paper not included).
- (h) Direct tax saving purchase program.

8.1.4 Overhead And Profit For Construction Phase

For overhead, profit and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the Construction Phase, except as may be expressly included in Article 9, the fee shall be TBD and shall be paid monthly proportionally to the Work completed, less retainage as set forth in Article 12.1 below. 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. The Construction Manager's exclusive remedy for any adjustments in the Overhead and Profit for Construction Phase fee is provided in Article 8.1.2(a)(b)(c).

ARTICLE 9 - COST OF THE WORK

9.1 Definition

The term Cost of the Work shall mean costs necessarily incurred in the Project during the Construction Phase for Construction services and paid by the Construction Manager, which are not included in Article 8. Such costs shall include the items set forth below in this Article.

The Owner agrees to pay the Construction Manager for the Cost of the Work as defined in Article 9. Such payment shall be in addition to the Construction Manager's fees stipulated in Article 8.

9.2 Direct Cost Items

- (1) Wages paid for labor (as opposed to wages paid to management or supervisory personnel) in the direct employ of the Construction Manager in the performance of his Work under Agreement, times a multiple of TBD to cover fringe benefits.
- (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 Construction Manager or made by the Construction Manager to subcontractors for their Work performed pursuant to subcontract 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, cost on such items used but not consumed which may be turned over to the Owner at the end of the Project and cost less salvage value on such items used but not consumed which remain the property of the Construction Manager. For those items to be turned over to the Owner at the end of the Project, Article 2.3(6) shall apply.
- (5) Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager 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 subcontractor or the Construction Manager'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 Construction Manager is required to procure by this Agreement or does procure specifically for the construction

Project. Construction Manager's casualty insurance is set at a fixed rate of TBD of the total construction cost (including all fees); Construction Manager bonds are set at a fixed rate of TBD of the total construction costs (including all fees). Construction Manager may require subcontractor and supplier bonds (the cost of which will be included in the subcontracts or purchase orders) or Construction Manager may use its "subguard" insurance program in lieu of Subcontractor bonds, at a fixed rate of TBD of all enrolled subcontracts and purchase orders, unless the cost of Subcontractor and Supplier bonds is less than that value, in which case the lower rate will apply. Contractor will provide a specimen subguard policy on request. Builder's Risk coverage shall be provided by Owner as described in Article 13.2(9).

- (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 Construction Manager is liable.
- (8) The cost of required corrective Work, except for any corrective Work made necessary because of defective workmanship or other causes under the control of Construction Manager or his subcontractors or suppliers. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any Work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.
- (9) Minor expenses at the site, such as telegrams, long distance telephone calls, 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 Construction Manager's own negligence or default.

This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by Construction Manager itself, for change orders or in enforcing the obligations of this Agreement.
- (13) All other costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Construction Manager's fees as set forth in Article 8, except as excluded specifically or by category.
- (14) If approved by the Owner, the Construction Manager may perform all or a portion of any item in Article 9 for the cost of the Work.
- (15) If approved by the Owner, the Construction Manager, when qualified, may perform all or a portion of the Work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the Work.
- (16) Transportation outside of Palm Beach County 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 Construction Manager's standard personnel policy but not exceeding the limits established by Florida Statutes 112.061.
- (17) Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project.
- (18) Costs for watchman, security services and other temporary security for the Project.
- (19) Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage, office, trailer and parking space.
- (20) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, temporary protection, telephones, radios and computers with

software.

- (21) Costs for any job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the Work.
- (22) Cost of utilizing a computer aided design and drafting application (CADD) for record drawings as described in Article 2.4(10)(k). Upon completion of the Work, the Construction Manager shall obtain 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 Client Agency, at the time of final completion.

ARTICLE 10 - CHANGE IN THE PROJECT

10.1 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 GMP, and the Construction Completion Date, being adjusted accordingly. All changes in the Project not covered by an authorized contingency shall be authorized by Change Order signed by the Owner before the change is implemented.

10.1.1 Change Order Definition

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

10.1.2 Acceptable Ways Of Determining Increases Or Decrease In The GMP On Change Orders

The increase or decrease in the Guaranteed Maximum 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 9 and a mutually acceptable fixed or percentage fee; or
- (4) by the method provided in Subparagraph 10.1.3.

10.1.3 Itemized Accounting on Change Orders

If none of the methods set forth in Clause 10.1.2 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, 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 a reasonable estimated cost of the change and the Construction Manager shall not perform any Work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.2 above, the Construction Manager 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 Work as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager 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. There will be no decrease in Construction Manager's fees under Article 8.1.2 unless the change reduces the time needed to complete the Project. In that case, there will be an equitable adjustment of that fee.

10.1.4 Adjustments In Unit Prices & GMP 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 Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.

10.1.5 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 Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2.

10.2 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 16.

If the Construction Manager is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate Construction Manager 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 Construction Manager's control or by delay authorized by the owner pending resolution of disputes, and such delay extends any completion date set in the GMP Amendment, then the date(s) shall be extended by Change Order for such reasonable time as the Construction Team may determine.

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

10.3 Minor Changes In The Project

The Architect-Engineer will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum 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 Construction Team, included in the Project Manual and displayed monthly in the PMIS. Changes shall also be approved by the Manager of Facilities Planning.

10.4 Emergencies

In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 10.

ARTICLE 11 - DISCOUNTS AND PENALTIES

11.1 Discounts and Penalties

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

ARTICLE 12 - PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements

The Construction Manager shall submit to the Owner a statement, sworn to if required, along with the cost reports required under Article 2.1.5, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Work during the previous period and the amount of the Construction Manager's fees due as provided in Article 8. Ten percent (10%) retainage shall be held on all payments until the Work is substantially complete, except for payments of Construction Manager's bond and insurance costs. At substantial completion, the Owner may approve a reduction of the retainage from 10% to 5% at its discretion For projects over two million dollars (2,000,000), ten percent (10%) retainage shall be held on all payments until the work has reached fifty percent (50%) completion, except for payments of the construction managers bond and insurance costs. After fifty percent (50%) completion of the construction services are completed pursuant to the Contract, the owner will reduce retainage to five percent (5%) of the amount withheld from each subsequent progress payment made to the Construction Manager in accordance with FI. Statute 255.078. The Construction Manager shall withhold retainage from his sub-contractors in accordance with FI. Statute 255.078. The owner will make payment of the retainage in compliance with FI. Statute 255.078. The Construction Manager's Design Phase Fee, Construction Phase Fee and Overhead & Profit shall be shown as separate line items on the Schedule of Contract Values. Payment of the Construction Manager's Overhead

and Profit under Article 8.1.4 is calculated by multiplying the percentage for those fees established here and/or in the GMP Amendment by the total dollar value of Work completed, including any stored materials, less ~~10%~~ the appropriate amount of retainage. This data shall be attached to the Partial Pay Request form shown in Exhibit K. Payments by the Owner to the Construction Manager shall be made as described in Article 17.7 hereinafter.

12.2 Final Payment

Final payment constituting the unpaid balance of the Cost of the Work and the Construction Manager's fee, shall be due and payable as described in Article 17.7 after the Owner has accepted occupancy of the Project, provided that the Project be then finally completed, that the Construction Manager has verified by his signature that he has completed all items specified on the attached Exhibit L, and that this Agreement has been finally performed. However, if there should remain Work to be completed, the Construction Manager and the Architect-Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to 200% of the estimated cost of completing any unfinished Work and portion of the Construction Manager'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 Construction Manager, monthly, the amount retained for each incomplete item after each of said items is completed.

12.3 Payments to Subcontractors

The Construction Manager shall promptly, within 15 days after receipt of payment from the Owner, pay all the amount due subcontractors less a retainage of ten percent (10%) until the Project is substantially complete, and based on Construction Manager's evaluation, as approved by the Architect-Engineer of the subcontractor's acceptable performance, the Owner may approve a reduction in retainage from 10% to 5% thereafter. Subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project up to the point of the partial pay request have been paid or otherwise satisfied with each pay request submission. If there should remain items to be completed, the Construction Manager and Architect-Engineer shall list those items required for completion and the Construction Manager shall require the retainage of a sum equal to 200% 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 Construction Manager 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.

12.4 Delayed Payments by Owner

If the Owner should fail to pay undisputed pay request to the Construction Manager within 30 days after the receipt of an approvable payment request from the Construction Manager, then the Construction Manager may, upon seven (7) additional days written notice to the Owner and the Architect-Engineer stop the Project until payment of the undisputed Amount owing has been received.

12.5 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 bonded location subject to prior approval and acceptance by the Owner on each occasion.

12.6 Withholding Payments To Subcontractors

The Construction Manager shall not withhold payments to subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owners, adjusting pay requests and Project bookkeeping as required. Should the Owner become aware that the Construction Manager did not make such previously approved payments to a subcontractor(s) and has not returned such undispersed funds to the Owner, the Owner shall withhold such undispersed amount(s) from future payment(s) to the Construction Manager, until such time as the Construction Manager makes such payments to subcontractor(s) and provides satisfactory evidence of such payment to the Owner. Construction Manager shall cause to be removed all illegal or improper liens filed against Owner's property and ensure that all subcontracts and sub-subcontracts contain a legally sufficient pay when paid clause.

ARTICLE 13 - INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

13.1 Indemnity

13.1.1 Indemnity

The Construction Manager agrees to indemnify and hold the Owner and its agents harmless from all claims for bodily injury and property damage (other than the Work itself and other property insured under Paragraph 13.2(3)) to the extent caused by the Construction Manager's negligence or breach of contract in connection with operations under this Agreement.

13.1.2 Other Contractor's Insurance

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 Construction Manager and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 13.2(3)) that may arise from such construction manager's operations. Such provisions shall be in a form satisfactory to the Construction Manager.

13.1.3 Loss Deductible Clause

Palm Beach State College and the State of Florida shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible in any insurance policy provided by Construction Manager or a subcontractor. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or subcontractor providing such insurance.

13.2 Construction Manager's Insurance

- (1) The Construction Manager shall not commence any construction Work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence Work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved by Owner. All insurance policies shall be with insurers qualified and doing business in Florida with a minimum A.M. Best Rating of A-, A or higher.
- (2) Worker's Compensation Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his employees connected with the work of this Project and, in case any work is sublet, the Construction Manager 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 Construction Manager. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this Agreement at the site of the Project is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected.
- (3) Construction Manager's Public Liability and Property Damage Insurance-The Construction Manager shall take out and maintain during the life of this Agreement Comprehensive General Liability and Comprehensive Automobile Liability Insurance which shall protect him 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 himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be minimum limits as follows:

(a) Construction Manager's Comprehensive General Liability Coverages, Bodily Injury & Property Damage	\$2 million Each Occurrence, Combined Single Limit
(b) Automobile Liability Coverages, Bodily Injury & Property Damage	\$1 million Each Occurrence, Combined Single Limit
(c) 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. Property Damage insurance shall not be canceled or lapsed on account of partial occupancy or use.

- (4) Subcontractor's Public Liability and Property Damage Insurance - The Construction Manager shall require each of his subcontractors to procure and maintain during the life of its subcontract, insurance of the type specified above or insure the activities of his subcontractors in his policy, as specified above, with such limits as Construction Manager shall require not in excess of the limits listed in paragraph 3 above.
- (5) "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
- (6) Broad Form Property Damage Coverage, Products & Completed Operations Coverages -The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.
- (7) Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
- (8) Indemnification Rider
 - (a) To cover to the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and its 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 only to the extent caused by any negligent or intentionally wrongful act or omission of the Construction Manager, 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 or 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 its agents or employees by any employee of the Construction Manager, 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 Construction Manager or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
 - (c) The obligations of the Construction Manager under this Article 13.2(8) shall not extend to the liability of Architect-Engineer, his 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 Architect-Engineer, his agents or employees providing such giving or failure to give is the primary cause of the injury or damage.
 - (d) The Construction Manager hereby acknowledges receipt of ten dollars and other good and valuable consideration from the Owner and acknowledges receipt of ten dollars and other good and valuable consideration from the Architect-Engineer in exchange for giving the Owner and Architect-Engineer, respectively, the indemnification provided above in Article 13.2(8).
- (9) Builder's Risk Coverage - The Owner shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form, 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. Any loss insured under this Subparagraph is to be adjusted with the Construction Manager and Owner and made payable to the Owner as trustee for the insured, as their interest may appear, subject to the requirements of any applicable mortgagee clause and shall not be cancelled or lapsed on account of partial occupancy or use. The Construction Manager shall pay each subcontractor a just share of any insurance money received by the Construction Manager and by the appropriate agreement, written where legally required for validity, shall require each subcontractor to make payment to his sub-subcontractors in similar manner. The Owner as trustee shall, upon the occurrence of any insured loss, deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may soon reach. If after such loss no other special agreement is made, replacement of damaged Work shall be covered by an appropriate Change Order.

- (10) 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 Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the Owner. The Owner shall accept binders evidencing coverage pending issuance and delivery of said certificates and policies. These shall be completed and signed by the authorized Florida Resident Agent and returned to the office of Facilities Planning. This Certificate shall be dated and show:

- (a) The name of the insured Construction Manager, 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 thirty (30) 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 13.2 and ending with 13.3.4.
- (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) Date of Birth of authorized Resident Agent.

13.3 Waiver of Subrogation

13.3.1 Damages Caused By Perils Covered By Insurance

The Owner and the Construction Manager waive all rights against each other and against subcontractors, for damages caused by perils covered by insurance provided under Article 13.2 to the extent covered by such insurance and as set forth in this Article except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

13.3.2 Loss Or Damage To Equipment Covered By Insurance

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

13.3.3 Property And Consequential Loss Policies

The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion with the exception of the College's \$10,000 deduction per occurrence.

13.3.4 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 14 - TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

14.1 Termination by the Construction Manager

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 Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the Owner's failure to make payments on undisputed pay request thereon, then the Construction Manager may, upon seven days written notice to the Owner, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit on completed Work, damages and terminal expenses incurred by the Construction Manager not caused by the Construction Manager's actions, failure to act or failure to mitigate.

14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause.

- (1) If the Construction Manager fails to perform any of his obligations under this Agreement including any obligation he assumes to perform Work with his own forces, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to commence correction of such obligation, make good such deficiencies. The GMP, or the actual cost of the Work, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.
- (2) If the Construction Manager is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, 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 Construction Team, or if he 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 Construction Manager and his surety, seven (7) days written notice, during which period the Construction Manager fails to commence correction of the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7 to the extent of work performed. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract Work).
- (3) If the Construction Manager refuses to allow public access to all documents, papers, letters, or other material to the extent required by the provisions of Chapter 119, Florida Statutes, and made or received by the Construction Manager in conjunction with this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, seven (7) days written notice, during which period the Construction Manager still fails to allow access, terminate the employment of the Construction Manager and take possession of the site and of all materials and equipment thereon paid for by the Owner, and may finish the Project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7 to the extent of Work performed. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract Work). Construction Managers obligation to allow public access as stated herein shall survive the termination or conclusion of this agreement. Construction Manager agrees to indemnify and hold harmless Owner from all cost, fees and award of damages Owner incurs as a result of Construction Manager's failure to comply with Florida law.

14.3 Termination by Owner Without Cause

- (1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.2(3), he shall reimburse the Construction Manager for any unpaid Cost of the Work due him under Article 9, plus that part of the unpaid balance of the Fees under Article 8 in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the total expected Fees as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the Construction Manager 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 Construction Manager has previously undertaken or incurred in good faith in connection with said Project. Construction Manager shall assure that all such obligations, commitments or contracts are terminable at will without cause upon the Construction Manager's termination pursuant to this contract. The Construction Manager shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps including the legal assignment of his contractual rights, as the Owner may reasonably require for the purpose of fully vesting in him the rights and benefits of the Construction Manager under such obligations or commitments.
- (2) After the establishment of the Guaranteed Maximum Price or at the completion of the Pre-construction

Phase, 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 Construction Manager his proportionate fee due in accordance with Article 8.1 plus any costs incurred pursuant to Articles 9 and 10. Owner is not liable for nor shall assume any responsibility for any of Construction Manager's unfulfilled contracts or obligations.

ARTICLE 15 - ASSIGNMENT AND GOVERNING LAW

15.1 Assignment Consent

Neither the Owner nor the Construction Manager shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

15.2 Governing Laws

This Agreement shall be governed by the Laws of the State of Florida without consideration to provisions on conflict of law, and all disputes will be brought in in the Courts of Palm Beach County, Florida.

ARTICLE 16 - NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY

16.1 Governing Provisions

The Owner's liability to Construction Manager for any 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:

- (a) All claims must be submitted as a Request for Change Order in the manner as provided herein;
- (b) The Construction Manager must submit a Notice of Claim to Owner and to the Architect-Engineer within 20 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and
- (c) Within 10 days of submitting its Notice of Claim, the Construction Manager 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 Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this Paragraph.

16.2 Written Determination Of Claim

After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Construction Manager 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 Construction Manager 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 Construction Manager's receipt of the Owner's determination. The venue for all civil and administrative actions against the Owner shall be in Palm Beach County, unless otherwise agreed by the parties.

16.3 Exclusive Remedy For Delays

For Work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager'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 16.1 above, for an extension of the scheduled construction time. In the event of a change in such Work, the Construction Manager's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes. The Construction Manager 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 17 - MISCELLANEOUS

17.1 Interest

Any monies not paid when due to either party under this Agreement shall not bear interest except as may be required by Section 215.422(3)(b), Florida Statutes (1989).

17.2 Harmony

Construction Manager is advised and hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his subcontractors for Work on the Project shall work in harmony with and be compatible with all other labor being used by building and Construction Managers now or hereafter on the site of the Project. Construction Manager further agrees that this provision will be included in all subcontracts of the subcontractors as well as the Construction Manager's own contract; 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.

17.3 Apprentices

If the Construction Manager employs apprentices on the Project, the behavior of the Construction Manager 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 Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.

17.4 Invoices Submitted Under Article 12

Invoices submitted under Article 12 shall be submitted in detail sufficient for a proper pre-audit and post-audit 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.

17.5 Construction Manager's Project Records

The Construction Manager's Project Records shall be maintained as prescribed hereinabove for the minimum period required by Florida Law and shall be made available to the Owner or his authorized representative at mutually convenient times for good cause.

17.6 Minority Participation

The Construction Manager shall diligently attempt to award a percentage of his material contracts and subcontracts to firms having a letter of certification as a minority by an entity acceptable to the owner.

17.7 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 Construction Manager, 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."

17.8 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.

17.9 Unauthorized Aliens

The Owner may consider the employment by any Construction Manager of unauthorized aliens a violation of section 274A(a) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this contract.

17.10 Electronic Mail Capabilities

The Construction Manager must have electronic mail capabilities through the World Wide Web. It is the intention of Palm Beach State College to use electronic communication for all projects whenever possible. The Construction Manager shall provide their electronic mail address and the name of a contact person responsible for their electronic communications

17.11 Current Funding Limitations

The Owner's current funding only allows for an expenditure towards the Owner's Pre-construction Services Budget as shown in Exhibit B to each subsequent Short Form Agreement. Any further services and/or construction requires additional funding and are only to be commenced upon receipt of a specific written authorization from the Owner's Contracts Administrator. The effectiveness of that part of this contract that applies to work beyond the Pre-construction Amount noted in Exhibit B to each subsequent Short Form Agreement is contingent upon receiving additional funds from the State of Florida. If the State of Florida does not furnish funds for work beyond the expenditure noted in Exhibit B to each subsequent Short Form Agreement towards the Owner's Construction Budget, the Owner may terminate this contract except that part thereof pertaining to the expenditure noted in Exhibit B to each subsequent Short Form Agreement towards Pre-construction Services, by written notice to the Construction Manager. In the event of such termination, the Owner shall not be liable for any payment to the Construction Manager other than that required for the expenditure noted in Exhibit B to each subsequent Short Form Agreement towards Pre-construction Services.

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

Construction Manager Name

Attest:

By _____
Corporate Secretary

By _____
Print Name & Title

As Witnessed:

By _____

(Corporate Seal)

PALM BEACH STATE COLLEGE

As Witnessed:

APPROVED:

By _____
Secretary

By _____, Chairperson
District Board of Trustees
Palm Beach State College

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

LEGAL COUNSEL- PALM BEACH STATE COLLEGE

EXHIBIT A

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Project: Project Name _____
Campus Name _____
Campus Address _____

Owner Palm Beach State College
4200 Congress Avenue
Lake Worth, FL 33461-4796

Architect/Engineer Architect _____
Address _____

Construction Manager Contractor _____
Address _____

EXHIBIT B
OWNER'S CONSTRUCTION BUDGET

<u>ITEM DESCRIPTION</u>	<u>CONSTRUCTION BUDGET</u>
CONSTRUCTION MANAGER'S PRECONSTRUCTION PHASE FEE	TBD
CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE.....	TBD
CONSTRUCTION MANAGER'S OVERHEAD & PROFIT	TBD
CONSTRUCTION BUDGET BALANCE	TBD
OWNER'S TOTAL CONSTRUCTION BUDGET	TBD

EXHIBIT C
CONSTRUCTION MANAGER'S PERSONNEL
OFF-SITE SUPPORT STAFF

<u>Individual</u>	<u>Title</u>
TBD	

ON-SITE SUPPORT STAFF

<u>Individual</u>	<u>Title</u>
TBD	

*Name and resume of individual to be assigned must be submitted to the Owner for his approval prior to assigning individual to project.

EXHIBIT D

Facilities Planning Division of
Facilities Department of
PALM BEACH STATE COLLEGE

Distribution to:

____ Manager of Facilities Planning
____ Architect/Engineer _____
____ CM _____

ARCHITECT/ENGINEER'S CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT NUMBER: _____ ARCHITECT/ENGINEER: _____
PROJECT: _____

OWNER: CONSTRUCTION MANAGER _____
Palm Beach State College
ATTN: CONTRACT FOR: _____
DATE OF ISSUANCE: _____ CONTRACT DATE: _____
PROJECT OR DESIGNATED PORTION SHALL INCLUDE: _____

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 above is hereby established as _____ which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

DEFINITION OF DATE OF SUBSTANTIAL COMPLETION

The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect-Engineer when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended as expressed in the Contract Documents.

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. The date of commencement of warranties for items on the attached list will be the date of final payment unless otherwise agreed to in writing.

ARCHITECT/ENGINEER BY: _____ DATE _____

The Owner accepts the Work or designated portion thereof as substantially complete.

Palm Beach State College _____
BY: _____ DATE _____

The Construction Manager will complete or correct the Work on the list of items attached hereto within the time prescribed in the contract from the above Date of Substantial Completion.

CONSTRUCTION MANAGER BY: _____ DATE _____

EXHIBIT E

**FACILITIES PLANNING DIVISION
FACILITIES BUILDING DEPARTMENT
CONSTRUCTION MANAGER'S AFFIDAVIT OF CONTRACT COMPLETION**

PALM BEACH STATE COLLEGE

PROJECT: : _____

CONSTRUCTION MANAGER: : _____

CONTRACT FOR: : _____

CONTRACT DATE: : _____ CONTRACT AMOUNT: : _____

CONSTRUCTION MANAGER'S AFFIDAVIT

I solemnly swear and affirm: That the work under the above named contract and all amendments thereto have been completed in accordance with the requirements of said contract; that all costs incurred for equipment, materials, labor, and services against 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 Workmen's Compensation claims are covered by Workmen's Compensation insurance as required by law; that all public liability claims are adequately covered by insurance, and that the Construction Manager shall save, protect, defend, indemnify, and hold the Owners harmless from and against any and all claims which arise as a direct or indirect result of any transaction, event or occurrence related to performance of the work contemplated under said contract to the extent required by the Agreement between Owner and Construction Manager.

CONSTRUCTION MANAGER:

_____ (SEAL)

Title: _____

Date: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ by _____ of
(date) (name of officer or agent, title of officer or agent)

_____, a _____ corporation, on behalf of the corporation. He/she is
(name of corporation acknowledging) (state or place of incorporation)

personally known to me or has produced _____ as identification.
(type of identification)

(Signature of person taking acknowledgement)

(Name typed printed or stamped)

(Title or Vendor)

(Serial number, if any)

EXHIBIT E (CONT'D)

**FACILITIES PLANNING DIVISION
FACILITIES BUILDING DEPARTMENT
CERTIFICATE OF CONTRACT COMPLETION**

PROJECT NO _____

PROJECT TITLE _____

CONSTRUCTION MANAGER _____

CONTRACT DATE: _____ DATE OF FINAL COMPLETION _____

CERTIFICATE OF ARCHITECT/ENGINEER

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; that the Construction Manager has submitted his sworn affidavit as evidence that he has paid all labor, materials and other charges against the project in accordance with the terms of the contract.

A/E Firm Name: _____ Date _____

By _____

TO BE COMPLETED BY ARCHITECT/ENGINEER
THROUGH THE SUBSTANTIAL COMPLETION PHASE

	DATE	DAYS	
1. Notice to Proceed (N.T.P.)	_____		Liquidated Damages to be completed by Palm Beach State College
2. Time Specified in Original Contract for Substantial Completion (S.C.)	<u>XXXXXX</u>	_____	
3. Extension Granted by Change Orders (Days Between Original Contract S.C. and Final Contract S.C.)	<u>XXXXXX</u>	_____	
4. Total Days Allowable to Substantial Completion (Add Lines 2 and 3)	<u>XXXXXX</u>	_____	
5. Project Substantially Completed as Certified by A/E (Total Days from N.T.P. through Date certified by A/E)	_____	_____	
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)	_____	_____	

THROUGH THE FINAL COMPLETION PHASE

1. Time Specified in Contract, Between Substantial & Final Completion	<u>XXXXXX</u>	_____	
2. Extensions Granted by Change Orders (Days Between S.C. & Final Completion)	<u>XXXXXX</u>	_____	
3. Total Days Allowable Between Substantial & Final Completion (Add Lines 1 & 2)	<u>XXXXXX</u>	_____	
4. Date Actually Completed and Total Days Between Actual S.C & Date Certified by A/E as Actually being Finally Completed.	_____	_____	
5. Final Completion Overrun (Subtract Line 3 & 4 and Enter Overrun)	<u>XXXXXX</u>	_____	@\$ Per Day=\$

TOTAL LIQUIDATED DAMAGES \$

DATE: _____

Manager of Facilities Planning

EXHIBIT F

PALM BEACH STATE COLLEGE BUILDING PERMIT APPLICATION

SUBMIT TO: Palm Beach State College
Permitting Section
4200 Congress Avenue
Lake Worth, Florida 33461
Phone: (561) 868-3486 , FAX: (561) 868-3483

- These documents have NOT been previously approved.
- These documents have been previously approved.
Approval letter attached.
- These documents are a re-use of documents previously approved for:

PROJECT NAME: _____

PROJECT ADDRESS: _____

CITY: _____ COUNTY: _____

PROJECT NUMBER: _____ COMPLETION DATE: _____

CONSTRUCTION MANAGER NAME: _____

ADDRESS: _____

CONTACT PERSON'S NAME: _____

TELEPHONE: _____ FACSIMILE: _____

PALM BEACH STATE COLLEGE

4200 Congress Avenue, Lake Worth, Florida 33461

CONTACT PERSON'S NAME: _____

TELEPHONE: _____ FACSIMILE: _____

OCCUPANCY TYPE: _____ CONSTRUCTION TYPE (I-VI): _____

TOTAL FLOOR AREA: NEW _____ EXISTING _____ NONE(x): _____

TOTAL CONSTRUCTION COST OF PROJECT: \$ _____

EXHIBIT G

CONSTRUCTION MANAGER'S PERSONNEL TO BE ASSIGNED DURING PRECONSTRUCTION PHASE

<u>Individual</u>	<u>Title</u>	<u>Off-Site Support Staff</u>	<u>Duration In Months</u>	<u>Percentage of Time Available</u>
TBD				

On-Site Support Staff

*Name and resume of individual to be assigned must be submitted to the Owner for his approval prior to assigning individual to project.

EXHIBIT H
CONSTRUCTION MANAGER'S PER DIEM STAFF FOR TIME
EXTENSIONS PER 8.1.(2)(b)

<u>Individual</u>	<u>Title</u>	<u>Per Diem Rate</u>
TBD		

*Name and resume of individual to be assigned must be submitted to the Owner for his approval prior to assigning individual to project.

EXHIBIT I
CONSTRUCTION MANAGER'S PERSONNEL TO BE
ASSIGNED DURING CONSTRUCTION
OFF-SITE

<u>Individual</u>	<u>Title</u>	<u>Duration In Months</u>	<u>Percentage of Time Available</u>
TBD			

*Name and resume of individual to be assigned must be submitted to the Owner for his approval prior to assigning individual to project.

EXHIBIT J
CONSTRUCTION MANAGER'S PERSONNEL TO BE
ASSIGNED DURING CONSTRUCTION
ON-SITE

<u>Individual</u>	<u>Title</u>	<u>Duration In Months</u>	<u>Percentage of Time Available</u>
TBD			

*Name and resume of individual to be assigned must be submitted to the Owner for his approval prior to assigning individual to project.

EXHIBIT K

OWNER'S CERTIFICATE OF PARTIAL PAYMENT

Construction Manager (Name and Address):

 Architect-Engineer Job No: _____
 Contract Time (Calendar Days): _____
 Time Elapsed to Date: _____

Request No: _____
 For Period Ending: _____
 Project Name: _____
 Owner's Project No: _____

	<u>ADDITIONS \$</u>	<u>DEDUCTIONS \$</u>
Change Orders approved in previous months by Owner -- TOTAL	_____	_____
Subsequent Change Orders		
Number Approved		
(Date)		
TOTALS	_____	_____
Net change by Change Orders \$	_____	THIS CERTIFICATE

Original Contract Sum.....\$
 Change Orders (Net).....\$
 Contract Sum To Date.....\$
 Balance To Finish.....\$
 Completed To Date\$
 Materials Stored\$
 Total Completed &
 Stored\$
 Less Retainage ___%\$
 TOTAL.....\$
 Less Previous Certificates\$
 Less Materials Purchased
 Directly By Owner:\$
 \$.....

SHOW INDIVIDUAL MBE PAYMENTS SEPARATELY ON SCHEDULE OF VALUES AND TOTAL ON THIS LINE	TOTAL AMOUNT PAID THIS CERTIFICATE TO MBE SUBCONTRACTORS \$
---	---

CERTIFICATION BY THE CONSTRUCTION MANAGER: According to the best of my knowledge and belief, I certify that all items and amounts shown on the face of 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 Construction Manager 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. I received an appropriate release from all subcontractors and materialmen for all work and materials provided pursuant to this and all prior pay request.

CONSTRUCTION MANAGER: _____

By:

STATE OF _____
 COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ by _____ of
 (date) (name of officer or agent, title of officer or agent)

_____, a _____ corporation, on behalf of the corporation. He/she is personally known
(name of corporation acknowledging) (state or place of incorporation)

to me or has produced _____ as identification.
(type of identification)

(Signature of person taking acknowledgement)

(Name typed printed or stamped)

(Title or Vendor)

(Serial number, if any)

CERTIFICATION BY THE ARCHITECT- ENGINEER: I certify that I have checked 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 suitably stored on the site; that all work and materials included in this Certificate have been inspected 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 approved for payment the amount noted above.

REVIEWED AND RECOMMENDED FOR PAYMENT:

Architect-Engineer

Date: _____

APPROVED FOR SERVICES, PERFORMED AS STATED BY:

Owner's Manager of Facilities Planning

Date: _____

EXHIBIT K con't

Chapter 713.01, Florida Statutes, defines Laborers, Materialmen and Subcontractors as follows:

- (1) "Laborer" means any person other than an architect, landscape architect, engineer, land surveyor, and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or labor service of others.
- (2) "Materialman" means any person who furnishes materials under contract to the owner, Construction Manager, subcontractor, or sub-subcontractor on the site of the improvement or for specially fabricated materials off the site of the improvement for the particular improvement, and who performs no labor in the installation thereof.
- (3) "Subcontractor" means a person other than a materialman or laborer who enters into a contract with a Construction Manager for the performance of any part of such Construction Manager's contract.

EXHIBIT L

ITEMS TO BE SUBMITTED WITH GENERAL CONSTRUCTION MANAGER'S REQUEST FOR FINAL PAYMENT

- _____ 1. Pay Request (4 copies with original signatures and original seals, noted as Final)
- _____ 2. Final Schedule of Contract Values
- _____ 3. Consent of Surety to make final Payment (signed and sealed)
- _____ 4. Power of Attorney from Surety for Release of Final Payment (Signed and sealed and dated same as Consent of Surety)
- _____ 5. Certificate of Contract Completion
 - _____ a. page one completed by the Construction Manager (original plus three copies) Exhibit E
 - _____ b. page two completed by Architect-Engineer (original plus three copies)
- _____ 6. Satisfactory Conclusion or Release of Lien from all subcontractors or laborers who have filed Intent to Liens or have indicated non-payment from the Construction Manager
- _____ 7. Construction Manager's Guarantee of Construction for one year from the date of substantial completion
- _____ 8. Copy of the approval by the Architect-Engineer and the transmittal to the Owner of manuals, shop drawings, as-builts (two set of disks, two sets of prints), brochures, warranties, and List of Subcontractors, with telephone numbers and addresses
- _____ 9. Verification that owner personnel have been trained in the operation of their new equipment (per system: HVAC, controls, fire alarm, etc.), attendance lists and preferred
- _____ 10. Fully executed Roof Warranty (if applicable) in the name of the Owner
- _____ 11. Other special warranties as required by specifications, in the name of the Owner
- _____ 12. Architect's Certificate of Specification of Asbestos Free Materials
- _____ 13. Construction Manager's Certificate of Asbestos Free Construction
- _____ 14. Copy of Certificate of Occupancy

NOTE: The Manager of Facilities Planning shall verify the math of all Pay Requests prior to signing Final Pay Request to assure correct payment.

Project Number: _____

Project Name and Location: _____

Manager of Facilities Planning Signature: _____

EXHIBIT M

CONTRACTOR'S MINORITY BUSINESS ENTERPRISES STATUS REPORT OF PARTIAL PAYMENT

Contractor's Name:
Address:
City, State:

Project Name:
Project #:

Contract Amount:
MBE Participation Amount
MBE Percent:

Draw Request #
Date:

Full Name of Minority Business Enterprise: Business Address Business Phone # Business Fax #	Description of Trade or Service	MBE Status (Hispanic/Woman/ African American/ Asian/Other)	State Certified MBE (Yes or No)	MBE Contract Amount	Amount Req. This Draw	Total Paid To Date
TOTALS:						