

## AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT, made by and between LEE COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter, "Owner," and O-A-K/Florida, Inc. dba Owen-Ames-Kimball Co., a Michigan corporation, and Licensed to Conduct Business in the State of Florida, hereinafter, "CM."

### WITNESSETH:

WHEREAS, on or about December 29, 2017, the Owner issued its Solicitation No. CMR180033TJM for Construction Manager At Risk-Annual Contract; and

WHEREAS, the CM has timely submitted a proposal in response to the Owner's Request for Proposal, whereby the CM has offered to provide construction management services in accordance with the request contained in Owner's Request for Proposal; and

WHEREAS, on February 27, 2018, the Owner selected and designated O-A-K/Florida, Inc. dba Owen-Ames-Kimball Company to be the CM for the Construction Manager at Risk for the Libraries ADA Upgrade, hereinafter, "**PROJECT**," subject to the negotiation, preparation, approval and execution of a definitive agreement between Owner and CM; and

WHEREAS, the Owner and CM are desirous of entering into such a definitive agreement pursuant to which CM will provide construction management services, all as more fully set forth herein;

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

### ARTICLE 1. EXTENT OF AGREEMENT; DEFINITIONS

1.01 Agreement. This **PROJECT** is comprised of two distinct parts identified as follows; (1) Phase 1 - Preconstruction Services (exhibit D); (2) Phase 2 - Construction Services (to be established in a separate amendment). All phases, including preconstruction services and architect-engineering services, may not exceed the total Lee County Project Budget established by the Board of County Commissioners. The CM accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The CM covenants with the Owner to furnish its skill and judgment as a Construction Manager and General Contractor with specific expertise in the planning and construction of the **PROJECT** and to cooperate with the Owner and the Owner's representatives, including specifically the Project Architect-Engineer (hereinafter referred to as "AE"), in furthering the interests of the Owner. The CM agrees to furnish efficient

business administration and superintendence and use its best efforts to complete the **PROJECT** in the best and most expeditious and economical manner, consistent with the interests of the Owner. The CM agrees to provide the services required by this Agreement to complete such services consistent with the Owner's direction, the approved program, and the terms of this Agreement, in accordance with a standard of care which is ordinarily exercised by other construction managers and general contractors in similar circumstances.

1.02 Construction Team. The CM, Owner and AE shall be called the "Construction Team" and shall work together as a team from the date established by the Notice to Proceed through construction completion. The CM and AE shall work jointly during the preconstruction design phase and through final construction completion and shall be available thereafter should additional services be required. The CM shall provide leadership to the Construction Team on all matters relating to construction. The CM understands, acknowledges and agrees that the AE shall provide leadership to the Construction Team on all matters relating to design and engineering.

1.03 Extent of Agreement. This agreement for Construction Management Services for the **PROJECT** represents the entire agreement between the Owner and the CM and supersedes any prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the Project Plans and Specifications and may be amended only by written instrument signed by both Owner and CM. This Agreement is intended to be consistent with and implement the approved program for the **PROJECT** as set forth and further defined in that certain agreement between Owner and AE dated May 2, 2017.

1.04 Definitions. As used in this Agreement, the words and phrases described in Exhibit A attached hereto and incorporated herein, shall have the meanings as set forth in that Exhibit A.

1.05 Use of Words and Phrases. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word "person" shall include corporations and associations, including public bodies, as well as natural persons. "Herein," "hereby," "hereunder," "hereof," "herein- before," and "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

## **ARTICLE 2. PURPOSE; PROPOSAL; SCHEDULE**

2.01 Purpose. The purpose of this Agreement is to provide for the provision of Construction Management Services for the **PROJECT** by the CM, and construction of the **PROJECT** by the CM in accordance with the Project Plans and Specifications. The further purpose of this Agreement is to define and delineate the responsibilities and obligations of the parties to this Agreement and to express the desire of all such parties to cooperate together to accomplish the purposes and expectations of this Agreement.

2.02 Response to Request for Proposal. CM's Response to the Request for Proposal for Construction Management Services submitted by CM to Owner is hereby found to be consistent with and in conformance with the provisions of Owner's Request for Solicitation No. CMR180033TJM, and is in the best interests of the citizens of Lee County, Florida. It is the intent of the parties that the CM's Response to the Request for Proposal for Construction Management Services be implemented pursuant to this Agreement, and, therefore, such Response is hereby merged into and is effectuated by this Agreement. Reference is hereby made to the response to the Request for Proposal for Construction Management Services submitted by CM to Lee County, as well as any supplementary representations and statements furnished by CM to Lee County during the CM selection process. The parties acknowledge that the representations and statements or information contained therein have been relied upon by the Owner and have resulted in the selection of CM as the construction manager for this **PROJECT**. However, Owner acknowledges that the terms and conditions for the performance of the CM and for the provision of its services are solely as contained within this Agreement.

2.03 Project Schedule. The development and equipping of the **PROJECT** shall be undertaken and completed in accordance with the Project Schedule. The construction services portion of the Project Schedule may be amended, revised and supplemented, and may thereafter be revised from time to time by and in the reasonable good faith discretion of the CM and AE, which revision shall be effective upon receipt by the Owner of a written notice of revision, provided, however, that absent an event of Force Majeure or a revision to the Project Schedule authorized by the execution of a Change Order, no revision to the Project Schedule which extends the preconstruction phase or the Project Substantial Completion Date shall be effective without the prior written approval of the Owner.

### ARTICLE 3. COMPENSATION

3.01 CM'S Compensation. The Owner agrees to pay to the CM as compensation for all of its services and work provided for hereunder, including preconstruction and construction services. The fee for preconstruction services, as provided in Exhibit D, is **\$3,000.00** and the sum of a CM fee to be negotiated at the time GMP\* is established for Construction Services, as provided for in Exhibit B.

\*The GMP will be established in a separate amendment to this Agreement.

(1) Preconstruction Services (Exhibit D) shall be payable as follows; \$1,500.00 upon delivery of the CM's estimated budget based on the 90% drawings, which must be delivered within 120 calendar days of the date established by the Notice to Proceed, and \$1,500.00 upon delivery of the GMP, which must be delivered within 180 calendar days of the date established by the Notice to Proceed, for a total of \$3,000.00. The compensation set forth in this paragraph is designed to pay CM for its services rendered in connection with the preconstruction design phase of the **PROJECT**. If at any time during the preconstruction design phase, it can reasonably be concluded that CM's services are not being provided in accordance with the schedule of preconstruction services, CM shall be reimbursed based upon a percentage of the services performed during the prior month.

(2) CM fee. Not more often than once a month, and on a date established at the Project Pre-Construction Conference, the CM will submit to the Project Manager for review the Estimate and Requisition for Payment Form (EADOC Software). This form shall be filled out and signed by the CM covering the Work-In-Place as of the date of the Application and supported by such data as the Project Manager may reasonably require. In the event that the Project Substantial Completion Date occurs prior to expiration of the construction phase period as set forth in the Project Schedule, the entire remaining balance due under the terms of this Subparagraph (2) shall be due and payable on the Punch List Completion Date.

(3) Reimbursable Project Costs. Based on application for payment for the actual cost of work completed, submitted monthly, itemized to correspond to the basis of compensation as set forth in Exhibit B and Article 6.03, including supportive documentation.

3.02 The Project; Changes in the Project; Additional Fee. The Project is as established by the Owner and AE in that certain construction document entitled Schematic and Conceptual Cost Analysis ("Schematic Design"). If the Project GMP is increased by Owner, the CM shall be entitled to receive an additional fee **to be negotiated and established by the Parties, in writing, at the time of such increase to the GMP.** Payment of CM's additional fee shall be made in equal monthly installments calculated by dividing the additional fee by the months remaining in the construction phase of the Project schedule. Upon completion of the additional work and final payment to the subcontractors, the actual cost of such additional work shall be established and any adjustment in the fees paid to CM shall be made between Owner and CM. As an incentive for the CM to diligently pursue cost reducing alternatives no reduction in CM fee below the amount set in Article 3.01 will occur as a result of project cost savings including those resulting from recommendations of the CM.

3.03 Period of Construction; Additional Fee. Owner, AE and CM expect and believe that the period of construction or construction phase for the **PROJECT** shall be **(to be established with Phase 2 amendment)** calendar days to **substantial completion** and **(to be established with Phase 2 amendment)**, calendar days to **final completion**.

Pre-Construction Phase Services shall be completed within **180 calendar days** of the date specified in the Pre-Construction Notice to Proceed.

**\*First Construction GMP payment and the subsequent monthly installments to be determined after the GMP has been established with Phase 2 amendment.**

In the event that the construction schedule is extended by agreement of Owner and CM due to changes in the **PROJECT** requested by Owner, CM shall be entitled to additional CM fee as negotiated in the GMP Amendment less any fee increase as calculated in Section 3.02 for work resulting in the subject increase in construction period. Provided, however, CM shall not be entitled to receive any portion of such additional compensation to the extent that the delay in performance results from acts of commission, omission, negligence, or fault of the CM, its agents or employees.

3.04 Project Costs. Project Costs shall mean all costs incurred by the Owner and CM in planning, constructing and equipping the **PROJECT**, in accordance with the Project Plans and Specifications all of which Project Costs shall be paid by the Owner, all of which Project Costs shall be included within the GMP established by CM and are more specifically described in Exhibit B.

- (a) The Owner reserves the right to execute Direct Material Purchase(s) for any and all materials provided to the **PROJECT**.

3.04.1 Direct Material Purchases. The CM shall review the design for the purpose of identifying major equipment and/or material purchases that may be advantageous for the Owner to purchase directly from suppliers as a

cost saving measure. Once items have been identified and quantified by the CM, and approved by the Owner for direct purchase, the Owner will issue purchase orders and process payment for invoices approved by the CM.

The CM shall prepare and be responsible for all quantities, descriptions, specifications, guarantees, payment schedules, etc., and all other required information to be included in the Owner issued purchase order.

3.05 Items and Expenses Included in CM's Compensation. Except as specifically set forth in Paragraphs 3.03 and 3.04 above, CM's compensation includes full payment for services set forth in this Agreement, including but not limited to salaries or other compensation of CM's officers, partners and/or employees; general operating expenses incurred by CM and relating to this **PROJECT**, including the cost of management, supervision and data processing staff, job office equipment and supplies, and other similar items as shown in Exhibit B, Part I, and necessary for CM to perform its services hereunder, specifically excluding any items described on Exhibit B, Part II, attached hereto and incorporated herein, and including overhead and profit.

#### **ARTICLE 4.**

##### **CONSTRUCTION MANAGER'S RESPONSIBILITIES AND SERVICES**

4.01 All documentation is required to be submitted into the County's EADOC system.

4.02 Project Management Information System. Commencing immediately following the date established by the Notice to Proceed, the CM shall implement and shall utilize throughout the life of this Agreement all subsystems of the Project Management Information System hereinafter referred to as "PMIS." The reports, documents and data to be provided through PMIS 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 AE monthly and shall accompany each pay request. If requested by the Owner, the CM shall conduct a comprehensive workshop in Lee County, Florida, for participants designated by the Owner and such additional seminars as are required to provide instruction. The workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS. The PMIS shall be described in terms of the following major subsystems:

(1) Narrative Reporting. The CM shall prepare written reports as described hereunder. All such reports shall be in 8-2" x 11" or other convenient format. Copies shall be maintained at the Project Site and transmitted to the Owner and the AE. A bound copy of the complete narrative report shall be submitted to the Owner at the conclusion of the **PROJECT**. The narrative reporting subsystem shall include the following reports:

(a) A monthly executive summary which provides an overview of current and outstanding issues and pending decisions, primary party responsible for the decision, future developments and expected achievements, and any problems or delays, including code violations found by the Permitting Authority.

(b) A monthly cost narrative describing the current construction cost estimate and 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 the analysis as necessary to compare planned performance with actual performance.

(d) A monthly accounting narrative describing the current actual cost and payment status of the **PROJECT** with supporting document. 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 project site.

(2) Schedule Control. As soon as reasonably possible following execution of this Agreement, but not later than thirty (30) days following full execution hereof, the CM shall prepare a Project Schedule using the critical path method, establishing a detailed schedule for preconstruction services, construction and Owner occupancy of the **PROJECT**, subject to review of Owner and AE, and approval or rejection by Owner within thirty (30) days of delivery to Owner. The Project Schedule shall include a scheduled Construction Commencement Date and Project Substantial Completion Date, which dates shall accommodate known or reasonably anticipated geographic, atmospheric and weather conditions. The Project Schedule will serve as the framework for the subsequent development of all detailed schedules. The Project Schedule shall be produced and updated monthly throughout the **PROJECT**. In a manner consistent with the Project Schedule the CM shall prepare and submit to the AE 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 CM proposes for each such activity

to occur as a necessary incident to performance of the work required to complete such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The AE shall determine whether the construction schedule delivered and submitted by the CM meets the requirements stated above and whether the construction schedule is consistent with the Project Schedule. Following development and submittal of the construction schedule, the CM shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the **PROJECT**, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule 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 Owner and AE in duplicate. The CM shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules.

(a) The CM 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 initial completion objectives keyed to the Project Schedule.

(b) Upon the award of each subcontract, the CM shall jointly with the subcontractor, develop a schedule which is more detailed than the original construction 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) The CM shall jointly develop with the AE 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.

(3) Work by Others. The Owner may perform additional Work related to the **PROJECT** by itself, or it may let other direct contracts which shall contain General Conditions similar to these.



The CM will afford the other Contractors who are parties to such direct contracts (or the Owner, if it is performing the additional Work itself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of the Work, and shall properly connect and coordinate his work with theirs. Should the Contract entail relocation of facilities not a part of this Contract, the CM will coordinate and cooperate with the applicable entity responsible for this portion of the work.

(4) Cost Control. 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 Project Costs, will not exceed the Project Budget. Based upon a quantitative material take-off with current local costs for each bid group by subcontract package, the CM shall provide its estimate of the total Project Costs for the **PROJECT**, detailed by line item budget within 30 days following the start date established by the Notice to Proceed at the following stages or phases:

- (a) At completion of the Design Development Phase 30%.
- (b) At completion of 60% of the Construction Documents Phase.
- (c) At completion of 90% of the Construction Documents Phase.
- (d) At completion of 100% of the Construction Documents Phase.
- (e) At establishment of the Guaranteed Maximum Price (GMP),

(5) Project Accounting. The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the **PROJECT**, including information relating to cash flow, costs, change orders, payments and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced and amounts payable. A schedule of values for each line item in the Project budget shall be integrated into the Project accounting contemplated by this paragraph. This subsystem will be produced and updated monthly and accompany each pay request. Project accounting includes the following reports which together will serve as a basic accounting tool and an audit trail:

- (a) 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) The value in place (both current and cumulative), the amount invoiced (both current and cumulative) and the balance remaining.

(c) 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.

#### 4.03 Design Review and Recommendations and Warranty

(1) Review and Recommendations. Immediately upon the start date established by the Notice to Proceed, CM shall familiarize itself thoroughly with the Schematic Design Construction Documents, and with the architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications being developed by the AE for the **PROJECT**. CM shall follow and/or otherwise review, as appropriate, the development of the design for the **PROJECT** from the Schematic Design presently available up through and including the Construction Document Phase. The CM shall make recommendations with respect to the selection of systems and materials and cost reducing alternatives (i.e., value engineering and life cycle cost analysis) including assistance to the AE and Owner in evaluating alternative comparisons versus long-term cost effects. The evaluation shall speak to the benefits of the speed of erection and early completion of the **PROJECT**. The CM shall furnish pertinent information as to the availability of materials and labor that will be required. The CM shall submit to the Owner, Permitting Authority and AE such comments as may be appropriate concerning construction feasibility and practicality (i.e., constructability analysis). The CM shall call to the Owner's and the AE's attention any apparent defects in the design, drawings and specifications or other documents.

(2) Review Reports. Within thirty (30) days after receiving the construction documents for each phase of the **PROJECT**, the CM shall perform a specific review thereof, focused upon factors of a nature encompassed in paragraph (1) above. Within the same 30-day period, the CM shall submit to the Owner and the AE a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as the CM may deem appropriate, and all actions taken by the AE with respect to same, any comments the CM may deem to be appropriate with respect to separating the work into separate contracts, and alternative materials. Prior to establishment of the GMP, CM shall warrant to Owner (without assuming any architectural or engineering responsibility) that the Project Plans and Specifications are practical, feasible, and constructible and that the construction of the improvements identified and described in the Project Plans and Specifications may be accomplished within the time frame identified and described in the Project Schedule.

(3) Long Lead Procurement. The CM shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials, and supplies). When each item is identified, the CM shall notify the subcontractors, Owner and the AE 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 AE has completed drawings and technical specifications and the CM has obtained permitting approval, the CM shall prepare invitations for bids. Copies shall be supplied to Owner in advance of the invitation to bid for Owner's information and comment. The CM shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Owner and AE of any problems or prospective delay in delivery.

(4) Separate Contracts Planning. The CM shall review the design and shall determine how it desires to divide the sequence of construction activities, and will determine the breakdown and composition of bid packages for award, based on the current schedule while the design is being completed and shall supply a copy for Owner for its review and approval. The CM shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, accesses and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner. The CM will supply the Owner a copy of the schedule for the Owner's information and comment. The CM will work in conjunction with the Owner's representatives, including the AE, to ensure that the bid list includes local, small and/or minority businesses.

(5) Interfacing.

(a) The CM shall take such measures as are necessary to ensure proper construction and delivery of the **PROJECT**, including but not limited to providing that all construction requirements will be covered in the separate procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap 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 scheduling for start and completion and its relationship to other separate contractors.

(b) Without assuming any design responsibilities for the AE, the CM shall include in the reports comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the AE may arrange for necessary corrections.

(6) Job Site Facilities. The CM shall arrange for all job site facilities required and necessary to enable the CM and AE to perform their respective duties and to accommodate any representatives of the Owner which the Owner may choose to have present on the job, the description of which shall be finalized prior to the establishment of the GMP.

(7) Weather Protection. The CM shall ascertain what temporary enclosures of building areas, if any, should be provided for and may be provided in order to assure orderly progress of the work in periods when extreme weather

conditions are likely to be experienced. The CM shall also be responsible for providing weather protection for work in progress and for materials stored on site.

(8) Market Analysis and Stimulation of Subcontractor Interest.

(a) The purpose of this subsection is to insure that the CM makes a genuine effort to stimulate interest in the **PROJECT** and maximize participation of potential qualified subcontractors in the selection process with emphasis placed on recruiting and using local, small and/or minority businesses. The CM shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the **PROJECT**; and make analysis as necessary to (i) determine and report on availability of labor, materials, equipment, potential subcontractors and possible impact of any shortages or surpluses of labor or material, and (ii) in light of such determination, make recommendations and take action as may be appropriate with respect to long lead procurement, separation of construction into subcontractor packages, sequencing of work, use of alternative materials, equipment or methods, other economies in design or construction and other matters that will promote cost savings and completion within the schedule time.

4.04 Establishment of Guaranteed Maximum Price for Construction. Prior to entering into any subcontracts, the CM will establish and submit in writing to the Owner for its approval a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner, for the Project Cost. Such Guaranteed Maximum Price shall only be subject to modification for changes in the **PROJECT** or as otherwise specifically provided for in this Agreement. However, the actual price paid for the work by the Owner shall either be: (1) the actual Project Cost, or (2) the GMP, whichever is the lesser when the work is finally complete. Owner may request and will be provided by CM copies of documents relating to the development of Project cost and GMP.

(1) All amounts of monies resulting from actual Project Costs, as described above, totaling less than the GMP shall be and accrue to the benefit of the Owner.

(2) The GMP will include only those applicable taxes in the Project Cost which are legally enacted at the time the GMP is established. Should any applicable taxes be enacted after the GMP then the GMP shall be increased by the same amount.

(3) At the time of submission of a Guaranteed Maximum Price, the CM will verify the time schedule for activities and work which were adopted by the Construction Team and used to determine the CM's GMP. The GMP will include an agreed-upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The CM will be required to furnish documentation evidencing proposed expenditures to this contingency prior to written authorization for the release of funds by the Owner. Actual and contemplated expenditures from the contingency shall be displayed monthly in the PMIS. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency.

(4) If requested by the Owner, when 100% of the subcontracts have been executed, the contingency within the GMP shall be decreased in proportion to the percent of the work as it is completed. In other words, if 10% of the work has been completed and paid and all subcontracts have been executed, 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.

(5) If any bid package consistent with the Project Plans and Specifications for which the lowest price submitted by a subcontractor is in excess of the amount allocated by the CM for such bid package (unless Owner through change order changes the Scope of Work and the Guaranteed Maximum Price (GMP)), one of the following may occur: (1) the price of the bid package may be negotiated with the lowest responsible bidder, or (2) at the CM's request and expense, and at the Owner's sole option, Owner may require the AE to make certain changes in the Project Plans and Specifications as are necessary to bring that particular package into line, consistent with Owner's program and the Project's financial feasibility, or (3) with the approval of the Owner, funds may be reallocated from the construction contingency within the GMP to pay the difference between the low bid price and the amount allocated for the bid package, but in no case shall such approval serve to increase the GMP of the **PROJECT**.

4.05 Performance Bond and Labor and Material Payment Bond. Prior to the Construction Commencement Date, the CM shall obtain for the benefit of and directed to the Owner, a labor and material payment and performance bond, satisfying the requirements of Section 255.05, Florida Statutes, covering the faithful performance by the CM of its obligations under this Agreement, including but not limited to, the construction of the **PROJECT** on the Project Site, and the payment of all obligations arising thereunder, including all payments to subcontractors, laborers and materialmen (the "Payment and Performance Bond"). The surety selected by the CM to provide the Payment and Performance Bond shall be approved by the Owner prior the issuance of such Bond, which approval shall not be unreasonably withheld.

4.06 Construction Phase; Building Permit; Code Inspection.

(1) Building Permit. The Owner shall pay for all permits. The Owner and AE shall be required to provide such information to the Permitting Authority as is necessary to obtain approval from the Permitting Authority to commence construction prior to beginning construction. The CM shall pull the Building Permit, and shall be responsible for delivering and posting the Building Permit at the Project Site prior to the commencement of construction. The Owner and AE shall fully cooperate with the CM when and where necessary.

(2) Code Inspections. All projects require detailed code compliance inspection during construction in disciplines determined by the Permitting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing, and general building. The CM shall

notify the appropriate inspector(s) and the AE's representative, no less than 24 hours in advance that the work is ready for inspection and before the work is covered up. All inspection shall be made for conformance with the applicable ordinances and building codes. Costs for all re-inspections of work found defective and subsequently repaired shall not be included as Project costs and shall be borne by the CM or as provided in the contract between CM and subcontractor.

(3) CM's Staff. The CM shall maintain sufficient off-site support staff and competent full-time staff at the Project Site authorized to act on behalf of the CM to coordinate, inspect and provide general direction of the work and progress of the subcontractors and the CM shall provide no less than those personnel during the respective phases of construction. The CM shall not change any of those persons unless mutually agreed to by the Owner and CM. In such case, the Owner shall have the right to approval of the qualifications of the replacement personnel. The Owner shall have the right to request to replace the staff at the Project site at any time during the construction.

(4) Lines of Authority. The CM shall establish and maintain lines of authority for its personnel and shall provide this information to the Owner and all other affected parties, such as the code inspectors of the Permitting Authority, the subcontractors, and the AE to provide general direction of the work and progress of the various phases and subcontractors. The Owner and AE may attend meetings between the CM and his subcontractors.

(5) Schedule Provision - Construction Phase. The CM shall continue to provide current scheduling information and provide direction and coordination regarding beginning and finishing dates, responsibilities for performance and the relationships of the CM's work to the work of its 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 Project Schedule shall include all phases of procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The CM shall advise the Owner, its representatives, and the AE of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond its control. The CM shall hold job-site meetings at least biweekly with the Construction Team and at least once each week with the subcontractors and the AE'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. The CM shall prepare and maintain a record of such meetings and distribute copies as necessary.

(6) Solicitation of Subcontracts.

The Owner intends to bid, through the CM, all portions of this **PROJECT**.

(a) The CM shall prepare all documents for bidding procurement of long lead items, materials and services, and for subcontractor contracts. The solicitation and award process shall be consistent with the requirements of Article 6 hereof.

(b) As part of such bid preparation, the CM shall review the specifications and drawings prepared by the AE. 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 CM shall be brought to the attention of the Owner and AE in written form.

(c) The CM shall, unless waived by Owner, conduct conferences with all prospective subcontractors, for the purpose of reviewing and approving awards. Invited will be the AE, Owner and Owner's representatives. In the event questions are raised which require an interpretation of the documents or otherwise indicate a need for clarification or correction, the CM shall transmit these to the AE and upon receiving clarification or correction in writing shall prepare an amendment to the document and issue same to all of the prospective subcontractors.

(d) Selection and award of subcontracts shall be consistent with Article 6 hereof.

(e) **If requested and approved by the Owner**, In accordance with the solicitation document, the CM, when qualified, may only be allowed to self-perform **25% or less** of the overall project where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work. The remaining 75% must be bid among subcontractors. If the CM discovers that self-performed services are more economically beneficial to the County then they may exceed the 25 % requirement with approval of the County. If the CM receives one or less bids from subcontractors in a selected specialty or field, then the CM may exceed the 25% self-performance with approval of the County.

(7) Quality Control. The CM shall develop and maintain a program acceptable to the Owner and AE to assure quality control of the construction. The CM shall be responsible for and supervise the work of all subcontractors, providing instructions to each when their work does not conform to the requirements of the Project Plans and Specifications and the CM shall continue to coordinate the work of each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should a disagreement occur between the CM and the AE over the acceptability of the work, the Owner, at its sole discretion and in addition to any other remedies provided herein, shall have the right to determine acceptability.

(8) Subcontractor. The CM shall solely supervise the subcontractors. The CM shall negotiate all change orders and field orders with all affected subcontractors and shall review the costs and advise the Owner and AE of their validity and reasonableness, acting in the Owner's best interest. Before any work is begun on any change order which is to be funded through contingency, approval for use of contingency funds must be secured from Owner and a written authorization from the Owner must be issued. However, when there is an imminent threat to health and safety, and Owner's concurrence is impractical, the CM shall act immediately to remove the threats to health and safety and shall subsequently fully inform Owner of all such action taken. The CM shall also carefully review all shop drawings and then forward the same to the AE and Owner for review and actions. The AE will transmit them back to the CM who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The CM shall maintain a suspense control system to promote expeditious handling. The CM shall request the AE to make interpretations of the drawings or specifications requested of him by the subcontractors and shall maintain a business system to promote timely response. The CM shall inform the AE which shop drawings or requests for clarification have the greatest urgency and need to be responded to first. The purpose shall be to enable the AE to prioritize requests coming from the CM. The AE shall timely respond. The CM shall advise the Owner and AE when timely response is not occurring on any of the above.

(9) Job Site Requirements.

(a) The CM shall provide each of the following activities as a part of its services hereunder:

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

(ii) Maintain a roster of companies on the **PROJECT** with names and telephone numbers of key personnel.

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



(iv) Provide labor relationships management and equal opportunity employment for a harmonious productive **PROJECT**.

(v) Provide and administer 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 best acceptable practice.

(vi) Provide quality control program.

(vii) Provide miscellaneous office supplies that support the construction efforts which are consumed by its own forces.

(viii) Provide for travel to and from its home office to the Project Site and to those other places within Lee County as required by the **PROJECT**.

(b) The CM shall provide personnel and equipment or shall arrange for separate subcontractors to provide each of the following as a Project Cost:

(i) Distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.

(10) Job Site Administration. The CM shall provide as part of its services, job site administrative functions during construction to assure proper documentation, including but not limited to the following:

(a) Job Meetings. Hold progress and coordination meetings to provide for a timely completed **PROJECT**. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing(s), labor allocation, etc. Review and implement revisions to the Project Schedule. Monitor and promote safety requirements. The CM shall use the job site meetings as a tool for (i) preplanning of work and enforcing schedules and for establishing procedures, responsibilities and identification of authority for all to clearly understand; (ii) identify party or parties responsible for follow up on any problems, delay items or questions, and (iii) record course for solution. The CM shall visit each pending item at each subsequent meeting until resolution is achieved and shall require all present to make known any problems or delaying event known to those present for appropriate attention and resolution.

(b) 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 and maintain a material and equipment expediting log.

(c) Payments to Subcontractors. Develop and implement a procedure for review, processing and payment of applications by subcontractors for progress and final payments.

(d) Document Interpretation. Refer all questions for interpretation of the documents prepared by the AE to the AE and the Owner.

(e) Reports and Project Site Documents. Record the progress of the **PROJECT**. Submit written progress reports to the Owner and the AE, including information on subcontractors' work, and the percentage of completion. Keep a daily log available to the Owner, the AE and the Permitting Authority inspectors.

(f) Subcontractors Progress. Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.

(g) Substantial Completion. The CM, AE, and Owner will conduct a pre-substantial completion inspection. The CM will prepare the pre-substantial completion punch list from which the CM and AE will develop a completion schedule. The CM shall ascertain when the work or designated portions thereof are ready for Owner and AE substantial completion inspection. The CM shall provide a complete list of incomplete or unsatisfactory items (preliminary punch list) to the Owner and AE prior to this inspection. The Owner and AE shall add to this list additional incomplete or unsatisfactory item(s). The CM shall prepare a punch list of items to be completed and a schedule for their completion including completion dates for review and approval by the Owner and AE ("Punch List Completion Date").

(h) Final Completion. Monitor the subcontractors' performance on the completion of the **PROJECT** and provide notice to the Owner and AE that the work is completed and ready for final inspection. Secure and transmit three (3) copies to the Owner, through the AE, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings and maintenance books including a final completion form.

(i) Startup. With the Owner's personnel, direct the check-out of utilities, operations, systems and equipment for readiness and assist in their initial start up and testing by the subcontractors.

(j) Record Drawings. The CM shall monitor the progress of its own forces or its subcontractors on marked up field prints so as to provide completed record drawings to be turned over to the AE for preparation of As-builts as required herein.

(k) Administrative Records. The CM will maintain at the job site and his principal office, originals or copies of, on a current basis, files and records, such as, but not limited to the following:

- Contracts or Purchase Orders
- Shop Drawings submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Contract Drawings and Specifications with Amendment
- Warranties and Guarantees
- Cost Accounting Records
- Labor Costs
- Material Costs
- Equipment Costs
- Cost Proposal Request
- 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
- Record Drawing Marked Print
- Operating and Maintenance Instruction
- Daily Progress Reports
- Transmittal Records
- Inspection Reports
- Bid/Award Information
- Bid Analysis and Negotiations
- Punch Lists
- PMIS Schedule and updates
- Suspense (Tickler) Files of Outstanding Requirements
- Documentation of Good Faith Effort
- Correspondence Files

The **PROJECT** records shall be available at all reasonable times to the Owner and AE for reference, review or reproduction.

(11) Shop Drawings and Samples. After checking and verifying all field measurements, the CM will submit to the AE and Owner for approval, in accordance with the acceptable schedule of Shop Drawing submission, five copies of all Shop Drawings, which shall have been checked by and stamped with the approval of the CM and identified as the AE may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable the AE to review the information as required.

The CM will also submit to the AE for approval with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of the CM,

identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.

(a) At the time of each submission, the CM will in writing call the AE's attention to any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents and, in addition, shall cause a specific notation to be made on each shop drawing submitted for review and approval of each such variation.

The AE will review and approve with reasonable promptness Shop Drawings and Samples, but its review and approval shall be only for conformance with the design concept of the **PROJECT** and for compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The CM will make any corrections required by the AE and will return the required number of corrected copies of Shop Drawings and resubmit new samples until approved. All cost incurred for the resubmitted shop drawing shall be the CM responsibility. The CM's stamp of approval on any Shop Drawing or sample shall constitute a representation to the AE that the CM has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers and similar data or he assumes full responsibility for doing so, and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Document.

No work requiring a Shop Drawing or sample submissions shall be commenced until the submission has been approved by the AE. Any related work performed prior to review and approval by the Owner of the pertinent submission will be sole expense and responsibility of the CM. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the CM at the site and shall be available to the AE.

The AE approval of Shop Drawings or samples shall not relieve the CM from his responsibility for any deviations from the requirements of the Contract Documents, unless the CM has in writing called the AE's attention to such deviation at the time of submission and the Owner and the AE have given written approval to the specific deviation; or shall any approval by the AE relieve the CM from responsibility for errors or omissions in the Shop Drawings.

#### 4.07 Project Schedule; Substantial Completion; Occupancy.

(1) Establishment of Project Substantial Completion Date. At the time a Guaranteed Maximum Price (GMP) is established, the Project Substantial Completion Date for completion of the construction may be amended by Owner upon recommendation of Construction Team, if reasonably necessary, which Project Substantial Completion Date shall be subject to Force Majeure. An amendment to Substantial Completion Date under this section will not necessarily involve additional CM compensation. The CM agrees to complete the construction prior to the Project Substantial Completion Date. The CM acknowledges that

failure to complete the **PROJECT** prior to the Project Substantial Completion Date will result in substantial damages to the Owner. The CM shall be assessed liquidated damages in the amount, (**\*\*Liquidated Damages will be established with Phase 2 amendment**), per calendar day for each day completion is extended beyond the Project Substantial Completion Date, plus any fines and penalties directly imposed against Owner by any regulatory and/or governmental authority against Owner. Provided, however, CM and Owner shall cooperate with each other, and shall use best efforts and due diligence to avoid the imposition of any such fines and/or penalties.

(2) Completion of Construction. The date of Substantial Completion of the **PROJECT** or a designated portion thereof is the date when construction is sufficiently complete in accordance with the Project Plans and Specifications so the Owner can lawfully occupy or utilize the **PROJECT** for the use for which it is intended. The CM warranty shall commence on the Project Final Completion Date.

(3) Owner Occupancy. The CM shall provide services during the design and construction phases which will provide a successful and timely Owner occupancy of the **PROJECT**. The CM shall provide consultation and Project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the subcontractors; "on line" in such conditions as will satisfy Owner operations requirements. The CM shall catalog operational and maintenance requirements of the equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The CM shall provide operations training, in equipment use, for building operators.

(4) Record Drawings. The CM shall continuously review Record Drawings and mark up progress prints. Upon receipt by CM of its final payment due hereunder, the CM shall provide to the AE and Owner an original of marked-up, Record Project Plans and Specifications showing the location and dimensions of the **PROJECT** as constructed, which documents shall be certified as being correct by the CM and the AE.

4.08 CM's Warranty. The CM warrants that all labor and materials will conform to the Project Plans and Specifications. The CM further warrants that all materials and equipment will be new, of good quality and free from any defects. With respect to the same work, the CM further agrees to correct or replace as necessary all work found by the Owner to be defective in material and workmanship or not in conformance with the Project Plans and Specifications for a period of one year from the Project Final Completion Date. CM shall use its best efforts and due diligence to ensure that, during the warranty period, those entities or individuals who have provided direct warranties to the Owner as required by the contract documents perform all required warranty work in a timely manner and at the sole cost and expense of such warranty providers. The direct cost of any warranty work shall be paid by CM. The CM shall collect and deliver to the Owner any specific written guaranties or warranties given by others as required by the contract

documents. Also, the CM shall conduct, jointly with the Owner and the AE, a warranty inspection eleven (11) months after the Project Final Completion Date.

4.09 Lien Free Construction. All construction services provided by CM or any of the subcontractors in construction of the **PROJECT** on the Project Site shall be accomplished in a manner that will result in no liens, claims or encumbrances being imposed against the **PROJECT**.

## **ARTICLE 5. OWNER'S RESPONSIBILITY**

5.01 Project Site; Title. The Owner hereby represents to the CM that it currently has, and will maintain up through and including the Project Substantial Completion Date, good title to all of the real property constituting the Project Site. Owner agrees to resolve, at its expense, any disputes relating to the ownership and use of the Project Site which might arise during the course of construction.

5.02 Permits. The CM shall be responsible for paying for all licenses. Owner shall be responsible for obtaining all necessary permits and governmental authorizations as may be necessary for the commencement of construction as contemplated by this Agreement, and through the completion of the **PROJECT**. Such permits and governmental authorizations shall include the Building Permit, temporary construction easements or right-of-ways if necessary, vacation of right-of-ways as may be required and any necessary variances, rezoning or other land use approvals. Upon receipt of all surveys, soils tests and other Project site information, CM shall promptly advise Owner of any inadequacies in such information and of the need for any additional surveys, soil or subsoil tests, or temporary construction easements or right-of-ways. Owner shall not be responsible for any delay or damages to the CM for any site conditions or deficiencies in the site and access to the site which could have been identified by CM and corrected by Owner prior to the establishment of the GMP. Nothing contained herein shall be construed as creating any obligation of the Owner relating to the **PROJECT** which is inconsistent with the exercise of Owner's obligations and responsibilities as a governmental authority, nor shall anything contained herein be construed as obligating the Owner to be a partner or joint venture with CM. Nothing herein shall be construed or deemed to contractually or otherwise obligate Owner to approve any rezoning or variance petition, if such rezoning or variance is necessary or desirable for development and/or completion of the **PROJECT**.

5.03 Project Plans and Specifications; Architect. The parties hereto acknowledge and agree that owner has previously entered into an agreement between Owner and AE dated May 2, 2017. Pursuant to the terms of such agreement, the AE, as an agent and representative of Owner, is responsible for the preparation of Project Plans and Specifications which consist of drawings, specifications and other documents setting forth in detail the requirements for the construction of the **PROJECT**. All of such Project Plans and Specifications shall be provided either by Owner or the AE and CM shall be under no obligation to provide same and shall be entitled to rely upon the accuracy and completeness of the Project Plans and Specifications provided by the AE, and all preliminary drawings prepared in connection therewith. The CM shall be notified of any written modification in the agreement between Owner and AE. By execution hereof, CM represents and warrants that it has reviewed the agreement between Owner and AE, and finds that such agreement between Owner and AE is

consistent and compatible with the obligations and requirements of CM as more fully set forth in this Agreement.

5.04 Surveys; Soil Tests and Other Project Site Information. Owner shall be responsible for providing a legal description and certified land survey of the Project Site in a form and content, and with such specificity as may be required by the AE and CM to perform their services. To the extent deemed necessary by Owner and AE, and solely at Owner's expense, Owner may engage the services of a Geotechnical Consultant to perform test borings and other underground soils testing as may be deemed necessary by the AE or the CM. CM shall not be obligated to provide such surveys or soil tests and shall be entitled to rely upon the accuracy and completeness of the information provided to CM. Owner shall provide CM as soon as reasonably possible following the execution of this Agreement all surveys or other survey information in its possession describing the physical characteristics of the Project Site, together with soils reports, subsurface investigations, utility locations, deed restrictions, easements and legal descriptions then in its possession or control.

5.05 Information; Communication; Coordination. The Owner hereby designates the County Administrator or the County Administrator's designee as Project Coordinator, to act in the Owner's behalf with respect to the **PROJECT**. The Project Coordinator shall examine all documents or requests for information submitted by the CM and shall advise CM of Owner's decisions pertaining thereto within a reasonable period of time to avoid unreasonable delay in the progress of the CM's services. CM shall indicate if any such documents or requests warrant priority consideration. However, decisions pertaining to approval of the Project Schedule as it relates to the date of Substantial Completion, the Project cost, CM's compensation, documentation relating to use of contingency, approving or changing the GMP shall only be effective when approved in writing by the Owner. Owner reserves the right to designate a different Project Coordinator provided CM is notified in writing of any such change. Owner and AE may communicate with subcontractors, materialmen, laborers or suppliers engaged to perform services on the **PROJECT**. Neither the Owner nor the AE shall attempt to direct the work of or otherwise interfere with any subcontractor, materialmen, laborer or supplier or otherwise interfere with the work of the CM.

5.06 Construction Inspections and Coordination. Owner, AE and CM agree to cooperate and coordinate with each other and all Permitting Authorities, including specifically: **Lee County Codes and Building Services**

5.07 Acknowledgment. The CM recognizes and acknowledges that Owner is a governmental body with certain procedural requirements to be satisfied. CM has and will make reasonable allowance in its performance of services for such additional time as may be required for approvals and decisions by the Owner and any other necessary government agency. Specific directions and approval made by the Owner shall be in writing authorized at its regular or special Board Meetings, or as otherwise consistent with authorities granted to the Project Coordinator.

## **ARTICLE 6. SUBCONTRACTOR SELECTION AND PAYMENT PROCESS**

6.01 Definition. A subcontractor is a person or organization who has a direct contract with the CM to perform any work at the Project Site. Except as specifically set forth herein with respect to direct materials acquisitions by Owner, nothing contained in this Agreement or in any contract document does or shall create any contractual relation between the Owner or AE and any subcontractor. Specifically, the CM is not acting as an agent of the Owner with respect to any subcontractor.

6.02 Subcontracts. The CM shall provide a copy of all proposed subcontracts, including general supplementary conditions to the Owner. Owner and CM understand, acknowledge and agree that Owner is in the process of evaluating its requirements for the procurement of subcontractor services necessary to construct the **PROJECT**. Prior to establishment of the GMP and CM's solicitation from subcontractors and/or suppliers, Owner and CM shall agree upon a procurement methodology and process which shall comply with the legal requirements and expectations of Owner. CM agrees to cooperate with Owner in any procurement methodology and process which is required by law, and also cooperate with Owner in any such methodology or process desired by Owner (and not otherwise legally required) provided that such cooperation does not result in any extension of the Project Substantial Completion Date established by the Project Schedule.

6.03 Application for Progress Payments.

(1) Not more often than once a month, nor less often than specified in the approved payment schedule, and on a date established at the Project Preconstruction Conference, the CM will submit to the AE and Owner for review an Estimate and Requisition for Payment Form (EADOC Software) (see Exhibit C for required forms) filled out and signed by the CM covering the actual Work completed as of the date of the Application and supported by such data. Also, if payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to and authorized in writing, the application for Payment shall also be accompanied by such supporting data, satisfactory to the Owner, as well establish the Owner's title to the material and equipment and protect its interest therein, including applicable insurance. All progress payments will be subject to the retainage percentage. Such retainage shall be paid and will be issued in the final payment after acceptance by the Owner of the Work.

The Estimate and Requisition for Payment form shall list individually, each instrument of change to the Guaranteed Maximum Price or Project Contingency, its approved value, the amount previously requisitioned, the amount sought in the current requisition, the total value of completed work and, if requested by the Owner, the Estimate and Requisition for Payment form shall, for each instrument of change to the Guaranteed Maximum Price or Project Contingency, be further detailed to provide a breakdown, by trade, of the values and requisition amounts for each trade, for each change instrument.

(2) Approval of Payments. The AE will, within ten (10) calendar days after receipt of each Application for Payment, either indicate his approval of payment and deliver the application to the Owner or return the Application to the CM indicating in writing the reason for refusing to approve payment. In the latter case,



the CM may make the necessary corrections and resubmit the Application. The Owner will, within five (5) calendar days after receipt of each approved application for payment, either indicate their approval of payment and within fifteen (15) calendar days pay the CM ninety percent (90%) of the portion of the GMP properly allocated to labor, materials and equipment incorporated in the Work and ninety percent (90%) of the portion of the GMP properly allocated to materials and equipment suitably stored at the site or at some other location or return the application to the CM through the AE indicating in writing the reason for refusing to approve payment. In the latter case, the CM may make the necessary corrections and resubmit the application to the AE.

At 50% project completion, the amount of retainage withheld from payments shall be reduced to 5%.

The AE's approval of any payment requested in an Application for Payment shall constitute a representation by him to the Owner, based on the AE's on-site observations of the Work in progress and on his review of the Application for Payment and the supporting data that the CM is entitled to payment of the amount approved.

The AE may refuse to approve the whole or any part of any payment if in his opinion, he is unable to make such representations to the Owner. He may then refuse to approve any such payment because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously approved, to such extent as may be necessary in his opinion to protect the Owner from loss because:

- 1) The Work is defective;
- 2) A portion of such payment is the subject of a dispute or claim that has been filed.
- 3) The amount has been reduced because of Modifications;
- 4) The Owner has been required to correct defective Work or complete the Work in accordance with the guarantee and warranty.
- 5) Of unsatisfactory prosecution of the Work, including failure to clean up.

(3) The CM shall pay each subcontractor, upon receipt of payment from the Owner, out of the amount paid to the CM on account of such subcontractor's work, the amount to which the subcontractor is entitled in accordance with the terms of the CM's contract with such subcontractor. The CM shall, by appropriate agreement with each subcontract, require each subcontractor to make payments to subcontractors in a similar manner. After receipt of payment from Owner, if the need should arise to withhold payments to subcontractors for any reason, as solely determined by CM, the CM shall promptly restore such monies to the owner, adjusting pay requests and Project bookkeeping as required.

Commencing with second application of the Estimate and Requisition for Payment form, the Owner may require, as a condition of payment, the submission of releases of lien from any or all subcontractors. Where the Owner so requires,

the releases furnished shall be original copies, properly executed and notarized, in a form acceptable to the Owner.

(4) The CM warrants that upon payment of any retainage, materials and equipment covered by a partial payment request will pass to Owner either by incorporation in construction or upon receipt of payment by the CM, whichever occurs first; (a) work, materials and equipment covered by previous partial payment requests are free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens"; and (b) no work, materials or equipment covered by a partial payment request will have been acquired by the CM, or any other person performing work at the site or furnishing materials or equipment for the **PROJECT** is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the CM or other such person.

#### 6.04 Application for Final Payment.

(1) Final Inspection. Upon written notice from the CM that the **PROJECT** is complete, the AE and Owner will make a final inspection with the CM and will notify the CM in writing of any particulars which this inspection reveals that the Work is defective. The CM shall immediately make such corrections as are necessary to remedy the defects within a reasonable time.

(2) Final Inspection for Payment. After the CM has completed any such corrections to the satisfaction of the AE and Owner and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection and other documents as required by the Contract Documents, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by legally effective final releases or waivers of liens from the CM and all subcontractor(s) which performed services for the CM pursuant to the Contract Documents and the consent of surety, if applicable to final payment.

(3) Approval of Final Payment. If, on the basis of its observations and review of the Work during construction, its final inspection and its review of the final Estimate and Requisition for Payment, all as required by the Contract Documents, the AE is satisfied that the Work has been completed and the CM has fulfilled all of his obligations under the Contract Documents, it will, within ten (10) calendar days after receipt of the final Application for Payment, indicate in writing its approval of payment and deliver the application to the Owner. Otherwise, it will return the Application to the CM, indicating in writing its reason for refusing to approve final payment, in which case the CM will make the necessary corrections and resubmit the Application. The Owner will, within fifteen (15) calendar days after receipt of approved application for final payment, either indicate their approval of the estimate and requisition application for payment and within fifteen (15) calendar days pay the CM the amount approved by the Owner and issue a Certificate of Final Completion or return the application through the AE indicating in writing the reason for refusing to approve payment. In the latter case, the CM may make the necessary corrections and resubmit the application to the AE.

If, after substantial Completion of the Work, final completion is materially delayed through no fault of the CM, and the AE so confirms, the Owner shall and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted, shall be submitted by the CM to the AE, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

If liquidated damages are to be deducted from the final payment, the Owner shall so notify the CM in writing at least ten (10) calendar days prior to the Owner's submittal to Finance.

The CM will be required to submit with his final payment documents a DBE Participation Certification, Form No. CMO:017 indicating all DBE subcontractor(s) and amount(s) utilized for the **PROJECT**.

At the final completion of the construction **PROJECT** the Owner's Project Manager will prepare a Contractor Performance Evaluation, Form No. CMO:018 and forward to the CM for review, comment and signature.

Upon receipt of the Contractor Performance Evaluation the CM will have seven (7) calendar days, from the date received, to review, comment, sign and return back to the Project manager. If the evaluation has not been received back from the CM within the seven (7) calendar days, the Owner will assume the CM fully agrees with and has no comments to the evaluation.

(4) Final Accounting Costs. Final accounting of costs of the work shall be provided by the CM in the form of a detailed cost report showing vendor, invoice number and date of invoice for all costs, all sorted by trade division cost code as is maintained by the CM in his accounting system. Upon receipt of the detailed cost report final accounting, the Owner may have access to all accounting records at the CM's place of business for review and reporting purposes by the Owner's accountant, whether external or internal.

## **ARTICLE 7 CHANGES IN THE PROJECT**

7.01 Amending and Supplementing Contract Documents. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- (a) a formal Written Amendment,
- (b) a Change Order, or
- (c) a Field Directive Change.

The Contract price and the Contract Time may only be changed by the Change Order or a Written Amendment.

In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- (a) a Field Change Order,
- (b) the AE approval of a Shop Drawing or sample, or
- (c) the AE written interpretation or clarification.

7.02 Changes in Work. Without invalidating the Agreement, the Owner may unilaterally and at any time or from time to time order additions, deletions or revisions in the Work; these will be authorized by Change Orders or Field Directive Change. Upon receipt of a Change Order on form (EADOC Software) or Field Directive Change on form CMO:012, the CM will proceed with the Work involved (See Exhibit C for required forms).

All such Work shall be executed under the applicable conditions of the Contract Documents.

If any Change Order or Field Directive Change causes an increase or decrease in the Guaranteed Maximum Price (GMP) or any extension or shortening the Contract Time, an equitable adjustment will be made.

Additional Work performed by the CM without written authorization of a change in the form of an approved Change Order will not entitle him to an increase in the Guaranteed Maximum Price (GMP) or any extension of the Contract Time, except in the case of an emergency.

It is the CM's responsibility to notify the Surety of any changes affecting the general scope of the Work or change of the Guaranteed Maximum Price (GMP) and the amount of the applicable Bonds shall be adjusted accordingly. The Surety's Acceptance must be submitted to the AE, by the CM, within ten (10) calendar days of the initiation of the change.

**7.03 Change of Guaranteed Maximum Price.** The Guaranteed Maximum Price (GMP) constitutes the total compensation payable to the CM for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CM shall be at his expense without change in the Guaranteed Maximum Price.

The Guaranteed Maximum Price (GMP) may only be changed by a Change Order (EADOC Software). Any claim for an increase or decrease in the Guaranteed Maximum Price (GMP) shall be in writing and delivered to the AE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within fifty (50) calendar days after such occurrence (unless Owner allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the CM's written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the CM has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the Guaranteed Maximum Price (GMP) will be valid if not submitted in accordance with this paragraph. All claims for adjustment in the Guaranteed Maximum Price (GMP) shall be reviewed by the AE. Any change in the Guaranteed Maximum Price (GMP) shall be incorporated in a Change Order and approved by the Owner. No claim by the CM for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Guaranteed Maximum Price shall be determined in one of the following ways:

(a) Where the Work involved is covered by unit prices contained in the Contract Documents or subsequently agreed upon, by application of unit prices to the quantities of the items involved.

(b) By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

(c) By cost of the Work and mutually acceptable fixed amount for overhead and profit agreed upon by the parties.

In such cases the CM will submit in the form prescribed by the Owner an itemized cost breakdown together with supporting data. The amount of credit to be allowed by the CM to the Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease as determined by the Owner. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase or decrease, if any.

Regardless of how the value of Work covered by a Change Order or any other claim for an increase or decrease in the Guaranteed Maximum Price is determined, in no case shall the total amount of overhead and profit, including all tiers of subcontractors, exceed 15% of the cost of the Work, unless otherwise approved by the Owner. Such 15% limit shall not include the cost of the Construction Manager's General Conditions or CM Fees where due.

**7.04 Change of Contract Time.** The Contract Time may only be changed by a Change Order (EADOC Software). Any claim for an extension in the Contract Time shall be in writing and delivered to the AE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating general nature of the claim. Notice of the extent of the claim with supporting data (analysis and documentation) shall be delivered within sixty (60) calendar days after such occurrence (unless the AE allows an additional period of time to ascertain in more accurate data in support of the claim) and shall be accompanied by the CM's written statement that the adjustment claim is the entire adjustment to which the CM has reason to believe it is entitled as a result of the occurrence of said event. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that the weather conditions had an adverse effect on the scheduled construction. No claim by the CM under this provision shall be allowed unless the CM has given the notice and the analysis and documentation required in this paragraph. All claims for adjustment in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

The Owner shall not be responsible for any delay in the completion of the **PROJECT** where the delay is beyond the control or without fault or negligence on behalf of the Owner. The Owner shall not be held accountable for extra compensation or an extension of time due to default by the CM, subcontractors, or suppliers in the furnishing of labor or materials for the **PROJECT**, or having to replace defective materials.

The CM shall be entitled to a claim for an extension of time when a delay or hindrance is caused by an act of God, or any act or omission on the part of the Owner, provided the CM gives notice to the AE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and having stated the general nature of the claim. The CM's sole remedy shall be an extension of Contract Time.

No extension of Contract Time or increases in Guaranteed Maximum Price (GMP) shall be granted for any delay caused either by (1) inadequate crewing, default or bankruptcy of lower tier contract, slow submittals, etc., or (2) by severe though not unusual weather conditions (other than hurricanes and tornadoes) or (3) any delay impacting a portion of the Work within the available total float or slack time and not necessarily preventing completion of the Work within the Contract Time unless otherwise agreed to by the Owner in its sole discretion or (4) for any delay which is caused by the CM having to replace defective material or (5) delays attributable to the lack of performance by subcontractors regardless of the reasons.

## **ARTICLE 8. RELATIONSHIP BETWEEN CM AND ARCHITECT-ENGINEER (AE)**

8.01 Administration. The AE will provide administration of this Agreement as it relates to inspection of the **PROJECT** during construction and shall at all times have access to the work wherever it is in preparation and progress. Owner shall, in accordance with this Agreement and Owner's Agreement with AE, use its best efforts to maintain cooperation between the AE and CM.

8.02 Inspection of the Work. The AE will visit the Project Site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with this Agreement and the Project Plans and Specifications. On the basis of the AE's on-site observations as the design professional, the AE will keep the Owner informed of the progress of the work, and will endeavor to protect the Owner against defects and deficiencies in the work of the CM. The AE will not have control or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work which shall be the obligation of CM.

8.03 Interpretation of Project Plans and Specifications. The AE will be the interpreter of the requirements of the Project Plans and Specifications. Upon receipt of comments or objections by CM or Owner, the AE will make decisions on all claims, disputes or other matters pertaining to the interpretation of the plans and specifications. The AE's decisions in matters relating to artistic effect will be final if consistent with the Project Plans and Specifications.

8.04 Rejection of Nonconforming Work. The AE and Owner have the authority to reject work which does not conform to the Project Plans and Specifications.

8.05 Uncovering of Work.

(1) If any portion of the work should be covered contrary to the written request of the AE, it must, if required in writing by the AE, be uncovered for his observation and shall be recovered at the CM's expense.

(2) If any other portion of the work has been covered which the AE has not specifically requested to observe prior to being covered, the AE may request to see such work and it shall be uncovered by the CM. If such work be found to be in accordance with the Project Plans and Specifications, the cost of uncovering and replacement shall, by appropriate Change Order, be added to the Project Cost.

**8.06 Correction of Work.** The CM shall promptly correct all work rejected by the AE for being defective or as failing to conform to the Project Plans and Specifications whether observed before or after the Project Completion Date and whether or not fabricated, installed or completed. The CM shall bear all costs of correcting such rejected work, including compensation for AE additional services made necessary thereby.

**8.07 Timely Performance of AE.** Owner, CM and AE understand, acknowledge and agree that timely performance and response by AE to certain information requested by CM is an important aspect of joint cooperation between and among the Construction Team. The CM shall identify which requests for information or response from the AE have the greatest urgency, and the CM shall identify those items which require prioritizing in response by the AE. The CM shall also identify the preferred time period for response and shall request a response time which is reasonably and demonstrably related to the needs of the **PROJECT** and CM. In the event that the period of time identified by CM for response is demonstrably unfair, AE shall communicate such information to CM, in writing, and AE shall identify the time necessary for response and a date upon which the AE's response will be made. In the event that the AE believes that any such information provided by CM is incomplete or otherwise inadequate to provide its response, AE shall immediately inform CM of such fact, in writing, with a copy to the Owner's Project Coordinator. In the event that the CM believes that AE is not providing timely services or responses as required by this paragraph, CM shall immediately inform AE of such fact, in writing, with a copy to the Owner's Project Coordinator.

## **ARTICLE 9 CONTRACTOR'S LIABILITY INSURANCE**

**9.01 Contractor's Liability Insurance.** The CM will purchase and maintain such insurance as will protect him from claims under Worker's Compensation laws, disability benefit laws or other similar employee benefit laws; from claims for damages because of bodily injury, occupational sickness or disease, or death of his employees including claims insured by usual personal injury, sickness and disease, or death of any person other than his employees including claims insured by usual personal injury liability coverage; and from claims for injury to or destruction of tangible property including loss of use resulting therefrom any or all of which may arise out of or result from the CM's operations under the Contract Documents, whether such operations be by himself or any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall be written for no less than the limits of liability specified in the Contract Documents or required by law, whichever



is greater, and shall include contractual liability insurance. As a prerequisite to the Owner signing the Contract, the CM will file with the Owner certificates of such insurance, acceptable to the Owner; these certificates shall contain a provision for cancellation.

**9.02 Insurance Requirements.** Before final execution of the Agreement and until acceptance of the Work by the Owner, the CM shall procure and maintain insurance of the types and of the limits specified below.

An Insurance Certificate shall be required from the CM. Such form must be properly executed and submitted by an authorized representative of the insurance company and CM. Such certificate of insurance state that the coverage is primary, and shall be in the types and amounts stated below. The Certificate should include producer's phone number and reference the name of the **PROJECT**.

**9.03 Certificate of Insurance.** Lee County Board of County Commissioners, its officers and employees is to be specifically included as an Additional Insured on the Commercial General Liability coverage.

It shall be the responsibility of the CM to ensure that all subcontractors carry General Liability Insurance, Automobile Liability, and Workers' Compensation in compliance with statutory limits.

The Certificate of Insurance must contain the following limits:

(a) Worker's Compensation: Coverage to apply for all employees for Statutory Limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a minimum limit of \$500,000.00 each accident. The certificate shall include a waiver of subrogation from the carrier.

(b) Commercial General Liability: Shall have minimum limits of \$1,000,000.00 per occurrence. Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and/or Operations, Independent Contractors and Products and/or Completed Operations, Broad Form Property Damage, and a Contractual Liability Endorsement. Said coverage must be on an occurrence basis. Lee County Board of County Commissioners, its officers and employees shall be included as an Additional Insured.

(c) Business Automobile Policy: Shall have minimum limits of \$1,000,000.00 per occurrence. Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Owned Vehicles, Hired and Non-owned Vehicles, and Employees Non-Ownership and be based on occurrence basis.

(d) All Risk Builders Risk or Installation Floater: Upon execution of the Phase 2 Amendment, and prior to issuance of the Notice to Proceed for Construction Phase services, the CM shall also procure and maintain All Risk coverage, with the limits of insurance to equal 100% of the completed contract

amount of such addition(s), building(s), or structure(s). Any deductible is the responsibility of the CM. The Owner shall be named as an additional insured only with respect to losses in connection with this contract.

The CM agrees that the requested insurance coverage(s) are not intended to and shall not, in any manner, limit or reduce the liabilities and obligations assumed by the CM, it's agents, employees, subcontractors, etc.

## **ARTICLE 10. FORCE MAJEURE, FIRE OR OTHER CASUALTY**

### **10.01 Force Majeure.**

(1) Delays in any performance by any party contemplated or required hereunder due to: fire, flood, earthquake or hurricane, acts of God, war, declaration of hostilities, revolt, civil strife, altercation or commotion, strike, labor dispute, or epidemic, or any law, order, proclamation, regulation or ordinance of any government or any subdivision thereof, or for any other similar cause to those enumerated, beyond the reasonable control and which with due diligence could not have been reasonably anticipated and without the fault or negligence of the party seeking excuse from performance, shall be deemed to be events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of Force Majeure, the date for performance required or contemplated by this Agreement shall be extended by the number of calendar days such party is actually delayed in such substantial completion.

(2) The party seeking excuse for nonperformance on the basis of Force Majeure shall promptly give written notice to the Owner, if with respect to the CM, or to the CM, if with respect to the Owner, specifying its actual or anticipated duration, and weekly thereafter, if such delay shall be continuing, written notice stating whether the condition continues and giving its actual or then anticipated duration. Each party seeking excuse from nonperformance on the basis of Force Majeure shall use its best efforts to rectify any condition causing a delay and will cooperate with the other party, except that neither party shall be obligated to incur any unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

**10.02 Casualty; Actions by Owner and CM.** During the Construction Period, if the **PROJECT**, or any part thereof, shall have been damaged or destroyed, in whole or in part, the CM shall promptly make proof of loss and Owner and CM shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon such damage or destruction. The CM shall diligently assess the damages or destruction and shall prepare an estimate of the cost, expenses and other changes, including normal and ordinary compensation to the CM, necessary for reconstruction of the **PROJECT** substantially in accordance with the Project Plans and Specifications. Within fifteen (15) days following satisfaction of the express conditions described in subsections (1), (2) and (3) below, the CM covenants and agrees diligently to commence reconstruction and to complete the reconstruction or repair of any loss or damage by fire or other casualty to the **PROJECT** to substantially the same size, floor area, cubic content and general appearance as prior to such loss or damage:

(1) receipt by the Owner or the Trustee of the proceeds derived from collection of all valid claims against insurers or others based upon such damage or destruction; and receipt of other sums from any source such that the funds necessary to pay the Project Cost and any additions to the Project Cost necessitated for repair or reconstruction are available;

(2) written agreement executed by the CM and the Owner, by amendment to this Agreement or otherwise, authorizing and approving the repair or reconstruction and any additions to the Project Cost necessitated thereby, including any required amendment to the GMP; and

(3) final approval by the Owner of the Project Plans and Specifications for such repair or reconstruction and issuance of any required Building Permit.

**10.03 Approval of Plans and Specifications.** The Owner agrees to approve the plans and specifications for such reconstruction or repair if the reconstruction or repair contemplated by such plans and specifications is economically feasible, and will restore the **PROJECT**, or the damaged portion thereof, to substantially the same condition as prior to such loss or damage and such plans and specifications conform to the applicable laws, ordinances, codes and regulations. The owner agrees that all proceeds of any applicable insurance or other proceeds received by the owner or the CM as a result of such loss or damage shall be used solely for payment of the costs, expenses, and other charges of the reconstruction or repair of the **PROJECT**.

10.04 Notice of Loss or Damage. The CM shall promptly give the Owner written notice of any significant damage or destruction to the **PROJECT**, defined as loss or damage which it is contemplated by CM will increase the GMP or extend the date of substantial completion, stating the date on which such damage or destruction occurred, the then expectations of CM as to the effect of such damage or destruction on the use of the **PROJECT**, and the then proposed schedule, if any, for repair or reconstruction of the **PROJECT**. Loss or damage which the CM determines will not affect the GMP or date of substantial completion will be reported to Owner and AE immediately and associated corrective actions will be undertaken without delay.

## **ARTICLE 11 INDEMNIFICATIONS**

11.01 Indemnification by CM. The CM shall indemnify, save harmless and defend the Owner and all of its officers, agents, consultants and employees from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any act or omission of the CM, his agent, consultants, employees, subcontractors etc., in the execution of the work or in consequence of any negligence or carelessness in guarding the same and agrees to assume any related cost.

The CM shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of work until the same shall have been completed and accepted. The CM agrees to repair, restore or rebuild any damages he causes to any property of the Owner. He shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation or order. The CM shall give to the proper authorities all required notices relating to the work, obtain all official permits and licenses and pay all proper fees. He shall repair any damage that may have occurred to any adjoining building, structure, utility or private property in the course of this work.

11.02 Exculpation. Nothing contained in this Article or in this Agreement shall be construed as creating or otherwise resulting in the CM assuming any liability or responsibility for the services provided to Owner by AE, his agents, employees, subcontractors, or otherwise, including, but not limited to those services involved in the preparation or approval of maps, drawings, opinions, reports, surveys, design or specifications, or the giving of, or the failure to give, directions or instructions by the AE, his agents, employees, subcontractors or otherwise, providing that such giving or failure to give is the primary cause of the injury or damage.

11.03 CONSEQUENTIAL DAMAGES. The CM and Owner waive claims against each other for consequential damages arising out of or relating to this Contract with the limited exception of liquidated damages as provided in Section 4.06(1) of this Agreement. This mutual waiver includes:

- (1) Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- (2) Damages incurred by the CM for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

## **ARTICLE 12.**

## DEFAULT; TERMINATION

12.01 Termination by Owner Without Cause. The Owner reserves the exclusive right to terminate this Agreement without cause as provided herein. In the event that Owner exercises its rights of termination, Owner shall provide written notice to CM of termination and the termination shall become effective upon delivery to CM of such written notice. As a condition of Owner's termination rights provided for in this paragraph, CM shall be released and discharged from all obligations arising by, through or under the terms of this Agreement, and the Payment and Performance Bond shall be terminated. In the event of any such termination by Owner, Owner shall assume and become liable for obligations, commitments and unsettled contractual claims that CM has previously undertaken or incurred in connection with the **PROJECT** and as authorized under this agreement. In addition, Owner shall pay CM the additional compensation described below:

(1) Termination by Owner for Certain Identified Events. After the establishment of the GMP, if the final cost estimates make the **PROJECT** no longer reasonably feasible from the standpoint of the Owner, Owner shall provide written notice to CM of termination prior the Construction Commencement Date. Owner shall pay CM all compensation earned or accrued by CM up to and including the date of termination.

(2) Termination Based Upon Abandonment, Casualty or Force Majeure. If, after the Construction Commencement Date (i) Owner abandons the **PROJECT** (which for purposes of this paragraph shall mean the cessation of all construction and other activities relating to the **PROJECT**, excluding those which are necessary to wind down or otherwise terminate all outstanding obligations with respect to the **PROJECT**, and no recommencement of same within 12 months following the date of termination), or (ii) the **PROJECT** is stopped for a period of 60 consecutive days due to an instance of force majeure or the result of a casualty resulting in a loss that cannot be corrected or restored within 120 days (excluding the time required to assess the damage and complete the steps contemplated, the Owner shall have the right to terminate this Agreement and pay the CM its compensation earned or accrued to date.

(3) Owner's Termination for Owner Convenience. Notwithstanding anything contained herein to the contrary, Owner may without cause, terminate this agreement at any time upon delivery of written notice to the CM. In the event Owner delivers such notice to the CM, CM agrees to withdraw its employees and its equipment, if any, from the work site on the effective date of the termination as specified in said notice (which effective date shall not be less than two (2) working days after the date of delivery of the notice), regardless of any claim the CM may or may not have against the Owner. In the event of such termination, CM shall be entitled to any unpaid Cost of the **PROJECT** incurred to the effective date of such termination, and to no compensation other than the fees owed or accrued through the date of termination.

12.02 Termination by the CM. In the event that the **PROJECT** is stopped for a period of sixty (60) days by the CM for the Owner's failure to make payments

thereon, or in the event that Owner shall have otherwise defaulted in its obligations under the terms of this Agreement, the CM, upon giving fourteen (14) business days written notice of such event of nonpayment or default to the Owner, and upon the expiration of such fourteen (14) business day period, if such nonpayment or other event of default has not been cured, the CM may terminate this Agreement and demand payment of all of the CM's compensation hereof and Owner shall assume and become liable for obligations, commitments and unsettled contractual claims that CM has previously undertaken or incurred pursuant to this Agreement.

**12.03 Owner's Right to Perform CM's Obligations and Termination by Owner for Cause.**

(1) If the CM fails to timely perform any of his obligations under this Agreement, including any obligation the CM assumes to perform work with his own forces, the Owner may, after seven (7) days' written notice, during which period the CM fails to perform such obligation, make good such deficiencies and perform such actions. The GMP, or the actual cost of the **PROJECT**, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the CM's compensation shall be reduced by an amount required to manage the deficiencies, provided, however, nothing contained herein shall limit or preclude Owner from pursuing additional damages from CM as a result of its breach.

(2) If the CM is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency, or if it 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, or fails, without being excused, to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 30 days or more behind schedule) which has been adopted by the Construction Team, or if it fails to make prompt payment to subcontractors for materials or labor, or disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of substantial violations of a provision of the Agreement, then the Owner may, without prejudice to any other right or remedy, and after giving the CM and its surety, if any, 14 days' written notice, and during which period the CM fails to cure the violation, terminate the employment of the CM and take possession of the Project Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by the CM, and may finish the **PROJECT** by whatever method the Owner may deem expedient. In such case, the CM shall not be entitled to receive any further payment. Owner shall be entitled to recover all costs and damages arising as a result of failure of CM to perform as provided in this Agreement, as well as reasonable termination expenses and costs and damages incurred by the Owner may be deducted from any payments left owing the CM.

**12.04 Obligations, Rights and Remedies Cumulative.** The specific rights and remedies to which either the Owner or the CM are entitled are not exclusive and are intended to be in addition to any other remedies or means of redress to which

the Owner or the CM may lawfully be entitled and are not specifically prohibited by this Agreement.

12.05 Non-action on Failure to Observe Provisions of This Agreement. The failure of the Owner or the CM to promptly insist upon strict performance of any terms, covenant, condition or provision of this Agreement or any exhibit or any other Agreement contemplated hereby, shall not be deemed a waiver of any right or remedy that the Owner or the CM may have, and shall not be deemed a waiver of any subsequent default or nonperformance of such term, covenant, condition or provision.

12.06 Litigation. All claims, disputes, or other matters in question between the Owner and the CM, arising under the terms of this Agreement and performance hereunder shall be decided by a court of competent jurisdiction, and shall not be the subject of arbitration. The parties agree that with respect to any Agreements executed by and between themselves relating to the **PROJECT** and any other persons or entities performing work on the **PROJECT**, that such agreements will contain a provision such that any disputes shall be resolved in a court of competent jurisdiction, it being the intention of all parties that any dispute be resolved in one consistent forum.

12.07 Attorney's Fees. In any litigation between the parties hereto arising out of this Agreement, the prevailing party shall be entitled to recover all fees and costs incurred in such litigation, including reasonable attorney's fees, through appeals.

### **ARTICLE 13. MISCELLANEOUS**

13.01 Harmony. CM is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by it and its subcontractors for work on the **PROJECT** shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the **PROJECT**. CM further agrees that this provision will be included in all subcontracts of the subcontractors as well as the CM'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 of the Florida Constitution. Owner's liability for obligations, commitments and unsettled contract claims in the event of termination of this Agreement, shall be limited in accordance with an agreed to subcontract termination clause approved by Owner.

13.02 Ownership of Products and Documents. All documents, reports, analysis maps, blueprints, drawings and other papers and products prepared or received by CM in connection with this Agreement ("CM's work"), upon payment by Owner of fees accrued and owing at the time of CM's work shall be the property of Owner and Owner shall have the right to use CM's work subsequently without restriction or limitation.

13.03 Minority Participation Policy. The CM is advised that the Lee County Board of County Commissioners has adopted a Resolution establishing an overall 10% goal for local Disadvantaged Business Enterprise (DBE) participation in County procurement's. CM will take all reasonable and necessary affirmative steps to assure that local DBE firms will be utilized for this **PROJECT**. This specific **PROJECT** will attempt to meet a 10% goal for Local DBE participation.

13.04 Successors and Assignment. No transfer or assignment of the rights and/or obligations of Owner under this Agreement shall be effective without the written consent of the CM. No transfer or assignment of the rights and/or obligations of the CM under this Agreement shall be effective without the written consent of the Owner. The terms herein contained shall bind and inure to the benefit of the Owner, its successors and assigns, and the CM, its successors and assignments, except as may be otherwise specifically provided herein.

13.05 Notices. All notices, demands, requests for approvals or other communications which may be or are required to be given by either party to the other in writing shall be deemed given and delivered on the date received by the person listed below or the Authorized Representative, or, if notice is by mail, on the date mailed to the address below or, if by hand delivery, on the date delivered to the address below:

To the CM	O-A-K/Florida, Inc. dba Owen-Ames-Kimball Company Alesha Watchowski 11941 Fairway Lakes Drive Fort Myers, FL 33913
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With a copy to:

And;

To the Consultant:	RG Architects, P.A. Charles Gutekunst, President 2070 McGregor Blvd., Unit 3 Fort Myers, FL 33901
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With a copy to:

And;

To the Owner	Lee County Board of County Commissioners P.O. Box 398 Fort Myers, FL 33902-0398
Department of Project Manager	Facilities Construction and Management Ayoub AL-Bahou, Project Manager, PE

The addresses to which notice is to be sent may be changed from time to time by a written notice delivered to each party to this Agreement. Until notice of change of address is received, a party may rely upon the last address given.

13.06 Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected



thereby if such reminder would then continue to conform to the requirements of applicable laws and if the remainder of this Agreement can substantially be reasonably performed without material hardship, so as to accomplish the intent and the goals of the parties hereto.

**13.07 Applicable Law and Construction.** The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by the Owner and the CM, and this Agreement, including the Exhibits, shall not be deemed to have been prepared by either the Owner or the CM, and each of them shall be deemed to have participated equally in the preparation hereof.

**13.08 Submission to Jurisdiction.**

(1) Each party to this Agreement hereby submits to the Jurisdiction of the courts of the State of Florida with venue in Lee County, Florida, and to the jurisdiction of the United States District Court for the Middle District of Florida, with venue in Fort Myers, Florida, for the purposes of any suit, action or other proceeding arising out of or related to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

(2) The present registered agent of **O-A-K/Florida, Inc. dba Owen-Ames-Kimball Company** is David J. Dale, the individual designated for service of process by the corporation which is CM under the terms of this Agreement, with an address of 11941 Fairway Lakes Drive, Fort Myers, FL 33913. If at any time during the term of this Agreement, the CM is not a resident of the State of Florida or has no partner, officer, employee or agent thereof available for service of process as a resident of the State of Florida, or if any permitted assignee thereof shall be a foreign corporation, partnership or other entity or shall have no officer, employee or agent available for service of process in the State of Florida, CM hereby designates the Secretary of State, State of Florida, its agent for the service of process in any court action between it and the Owner, arising out of or related to this Agreement and such service shall be made as provided by the laws of the State of Florida for service upon a nonresident; provided, however, that at the time of service on the Secretary of State, a copy of such service shall be mailed by prepaid, registered mail, return receipt requested, to the CM at the address for notices.

**13.09 Estoppel Certificates.** The CM and the Owner shall at any time and from time to time, upon not less than twenty-one (21) days prior notice by the other party, execute, acknowledge and deliver to the other a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications that the same as modified is in full force and effect and setting forth such modifications), the dates to which any changes have been paid in advance, if any, and, to the knowledge of such party, neither it nor the other party is then in

default hereof, it being intended that any such statement delivered may be relied upon by any prospective purchaser, mortgagee, assignee of any mortgage or assignee of the respective interests in the **PROJECT**, if any, of either party made in accordance with the provisions of this Agreement.

13.10 Complete Agreement. The written form of this Agreement and the Exhibits supersede and control over any and all prior agreements, understandings, representations and statements, whether written or oral, specifically including, but not limited to the Proposal, made with regard to the matters addressed by this Agreement.

13.11 Captions. The section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way definite, limit or describe the scope or intent of this Agreement, or any part thereof, or in any way affect this Agreement, or construe any article or section hereof.

13.12 Holidays. It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given or done on a Saturday or Sunday or on a legal holiday observed by the Board of County Commissioners of Lee County, Florida, it shall be postponed to the next following business day not a Saturday, Sunday or legal holiday.

13.13 Exhibits. Each Exhibit referred to in and attached to this Agreement is an essential part of this Agreement. The Exhibits, and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

13.14 Authorized Representatives. Within three (3) business days following the Effective Date of this Agreement, the Owner and the CM shall each designate an initial authorized representative (the Project Coordinator as to the Owner) to act on its behalf to the extent and for the duration of the **PROJECT** and shall provide to the other the name, address and specimen signature of such authorized representative. Unless otherwise designated by Owner to the contrary. Thereafter, subsequent or replacement designations may be made as deemed necessary and appropriate by the designating party. Upon such subsequent or replacement designation being made, the designating party shall promptly notify the other party hereto.

13.15 Nondiscrimination. At all times during the construction of the **PROJECT**, including the receipt, evaluation, negotiations and approval of all bids for work to be performed on the **PROJECT**, and the hiring and discharge of all employees or other personnel, the CM shall not discriminate against any person or entity on the basis of race, creed, sex or national origin.

13.16 No General Obligation. In no event shall any obligation of the Owner under this Agreement be or constitute a pledge of the ad valorem taxing power of the Owner within the meaning of the Constitution of the State of Florida or any other applicable laws. Neither the CM nor any other party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of the Owner, in any form on any real or personal property to pay the Owner's obligations or undertakings hereunder.

13.17 Members of the Owner Not Liable.

(1) All covenants, stipulations, obligations and agreements of the Owner contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the Owner to the full extent authorized by the Constitution and laws of the State of Florida.

(2) No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the Governing Body or agent or employee of the Owner in its, his or their individual capacity, and neither the members of the Governing Body of the Owner, nor any official executing this Agreement shall be liable personally or shall be subject to any accountability by reason of the execution by the Owner of this Agreement or any act pertaining hereto.

13.18 Relationship of the Parties. No party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party to third parties, and nothing in this Agreement shall be deemed to contemplate either party as a partner, agent or local representative of the other party, or relationship between the parties or to create the relationship of employer/employees.

13.19 Maintenance of Records. The CM shall keep adequate records and supporting documents applicable to this contractual matter. Said records and documentation will be retained by the CM for a minimum of five (5) years from the date of termination of this Agreement. The Owner and its authorized agents shall have the right to audit, inspect and copy records and documentation as often as the Owner deems necessary during the period of this Agreement and during the period of five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours. The Owner, during the period of time expressed by the preceding sentence, shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of the CM as concerns the aforesaid records and documentation.

CM specifically acknowledges its obligations to comply with §119.0701, F.S., with regard to public records, and shall:


- 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
- 2) upon request from the County, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law;
- 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of CM upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

**IF THE CM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, <http://www.leegov.com/publicrecords>.**

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

Signed, sealed, and delivered in the presence of:

**COUNTY: LEE COUNTY, FLORIDA**

BY:   
Ehab Guirguis  
Director of Facilities & Construction  
Management, on behalf of the Board of  
County Commissioners

DATE: 1/9/2019

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY:

BY:   
OFFICE OF THE COUNTY ATTORNEY

WITNESS:

**O-A-K/Florida, Inc. dba  
Owen-Ames-Kimball  
Company**

Signed By: 

Print Name: Alesha Watehaoski

Signed By: 

Print Name: David J. Dale

Title: President

Date: 12/19/18

## EXHIBIT A

### DEFINITIONS

1. "Agreement" means this Agreement between Owner and Construction Manager, including any Exhibits attached hereto, and any amendments or revisions to this Agreement or any of the exhibits.
2. "Authorized Representative" means the person designated by the Owner and CM, respectively, to act on its behalf, pursuant to the terms of this Agreement. The Authorized Representative is referred to herein in this Agreement as Project Coordinator.
3. "Change Order" means a written order to the CM signed by the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Guaranteed Maximum Price or the Contract Time. The Guaranteed Maximum Price and the Contract Time may be changed only by a Change Order. A Change Order signed by the CM indicates his agreement therewith, including the adjustment in the Guaranteed Maximum Price or the Contract Time.
4. "Completion (Final)" means acceptance of the Project by the Owner as evidenced by its signature upon a final payment Certification form No. CMO:505(3) and approval thereof by the Board of County Commissioners or their designee. The final payment Certification shall be signed only after the Owner has assured itself by tests, inspections, or otherwise that all of the provisions of the Contract have been carried out as required.
5. "Completion (Substantial)" means an acceptance of the Work by the Owner 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. A certificate of occupancy or compliance, when applicable, issued by the Building Official is required concurrent with or prior to issuance of the Certificate of Substantial Completion.
6. "Construction Commencement Date" means the date specified in the Construction Phase Notice to Proceed.
7. "Effective Date of the Agreement" means the date on which the agreement is signed and delivered by the latter of the two parties.
8. "Exhibits" means those agreements, forms of agreements, instruments and other documents attached hereto and designated as exhibits to this Agreement or incorporated by reference into this Agreement.
9. "Field Change Order" is a written change order requested by the AE, accepted by the CM, and approved by the Project Coordinator for minor changes in the Work, not involving the adjustments in the Guaranteed Maximum Price or an extension of Time, and not inconsistent with the overall intent of the Contract Documents.

10. "Field Directive Change" is a written directive to the CM, issued on or after the effective date of the Agreement ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed or to emergencies. A Field Directive Change may not change the Guaranteed Maximum Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Field Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Guaranteed Maximum Price or the Contract Time.
11. "Force Majeure" means those conditions constituting excuse from performance as described in and subject to the conditions described in Paragraph 10.01 hereof.
12. "Guaranteed Maximum Price (GMP)" is established by the CM guaranteeing the maximum price to the Owner, for the construction cost of the project.
13. "Owner" means Lee County, Florida, a political subdivision of the State of Florida, and any successor in interest thereto.
14. "Permitting Authority" means Lee County and any other applicable governmental authority acting in its governmental and regulatory capacity, which is required to issue or grant any permit, certificate, or other approval which is required to issue or grant any permit, certificate, or other approval which is required as a condition precedent to the commencement of any construction of the Project, or any part thereof, including the Building Permit.
15. "Project" means the design, construction and equipping of the Project established in the "Agreement between Owner and Construction Manager" and related or appurtenant facilities thereto, in accordance with the Project Plans and Specifications.
16. "Project Architect" or "AE" means Architect or Engineer established in the "Agreement between Owner and Construction Manager" and their successors and assigns, who have been selected by and retained by the Owner to provide the services of licensed architect-engineer for the Project as contemplated by this Agreement.
17. "Project Budget" means the compilation of identified costs for all services to be provided by CM, Project Architect and Subcontractors in connection with the planning, design, construction and equipping of the Project in accordance with the Project Plans and Specifications.
18. "Project Plans and Specifications" means the construction drawings and final specifications prepared by the Project Architect and any changes, supplements, amendments or additions thereto approved by the Owner and CM, which shall also include any construction drawings and final specifications required for the repair or construction of the Project.

19. "Project Schedule" means the estimated and approximate schedule and sequence of events for the commencement, progression and completion of the Project, and as such schedule may be amended as provided for in the Agreement.
20. "Punch List Completion Date" means the date upon which all previously incomplete or unsatisfactory items, as identified by CM, Project Architect and/or Owner are completed in a competent and workmanlike manner, consistent with standards for renovation of this type and with good building practices in the State of Florida.
21. "Subcontractor" means any person or organization as defined in Paragraph 6.01 hereof.

End of Exhibit A



## EXHIBIT B

### PROJECT COSTS

"Project Costs" mean all of the costs incurred by the Owner and CM [excluding Part II, below] in planning, constructing and equipping the Project, all of which Project Costs are to be incorporated within the GMP established by the CM, and without excluding any cost not listed but which is specifically identified in the Agreement, shall include the following:

#### PART I

##### Part IA - Costs Included Within CM Fees

Proportion related to this project of:

Salaries or other compensation of the CM's officers, partners and/or employees at its principal office and branch offices unless otherwise indicated in Part IB.

CM's general operating and overhead expenses of the CM's principal and branch offices, and all CM profit.

The costs of all data processing staff and data processing equipment.

Licenses.

Principal and branch office supplies including paper, pencils, paper clips, file folders, staples, etc.; janitorial supplies.

Costs for copies of documents created within the PMIS Reporting System and copies of all documents furnished to Owner.

##### Part IB – Reimbursable Project Costs Not Included within CM Fee

Wages and salaries of the Construction Manager's Project Manager and Superintendent when stationed at the site with the Owner's agreement.

Expenses such as telephone and facsimile service at the site, long-distance telephone charges, expressage, and postage.

Contractors public liability and property damage insurance; and Worker's Compensation insurance.

Construction or other work performed by CM or otherwise, which, when CM is permitted to bid pursuant to this agreement, shall be for the bid price or where such work is performed pursuant to emergency or similar circumstances, shall be for the wages paid for labor in the direct employ of the CM (as opposed to wages paid to management or supervisory personnel), and such fringe benefits, if any, as may be payable with respect thereto.

Blueprint/Printing Copies - Costs of all reproductions used for bidding or information which may be distributed to vendors and the public.

Electrical Power consumption (monthly) - temporary construction use only.

Water consumption (monthly) - temporary construction use only.

Cleanup at the job site.

Barricades and safety equipment at the job site.

Temporary fencing and gates at the job site.

Signs at the job site, only sign permitted on site is project sign as defined in construction specification.

Weather protection at the job site.

Construction office trailer at the job site.

Record Drawings.

Progress Photographs/Video.

Owner's Insurance, including Builders Risk and Completed Products and Operations insurance

Cost of all materials, supplies and equipment incorporated by CM in the Project, including costs of transportation and storage thereof.

Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the work and cost less salvage value on such items used but not consumed which remain the property of the CM.

No costs shall be paid by the Owner to the CM 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 CM.

Surveys; layout equipment and materials.

Temporary Toilets/holding tanks.

Dumpsters at the job site.

Watchmen at the job site.

All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the CM's fees as set forth in the Agreement.

## PART II

### **Owner's Expenses**

The Agreement includes items designated or contemplated as items to be provided by Owner, but excluded for the purposes of determination of the project costs or GMP. These items include but may not be limited to the following:

Site conditions (such as hazardous materials, concealed subsurface conditions and assorted tests and corrective measures).

Additional surveys, except construction layout.

Easements and temporary construction easements.

Land use approvals, if required.

Impact Fees.

Blue Print/Printing copies of the construction documents, plans and specifications.

Permits.

Additional insurance, if any.

Any additional consultant fees as may be required, additional AE fees, additional CM fees.

All furniture, equipment and materials purchased and installed by Owner or other than CM.

Previously approved AE fees.

Already paid site acquisition costs.

Already completed Geotechnical and site studies.

Services provided by the Owners employees in planning, constructing and equipping the project.

End of Exhibit B

EXHIBIT C  
PROJECT FORMS

1. Proposal Request (EADOC Software)
2. Field Change Order CMO:010
3. Change Order (EADOC Software)
4. Field Directive Change (2 sheets) CMO:012
5. Estimate & Requisition for Payment (EADOC Software)
6. Certificate of Substantial Completion (2 sheets) CMO:014
7. Warranty CMO:015
8. Owner's Representative Certificate of Final Completion CMO:016
9. Disadvantaged Business Enterprise Participation Cert. CMO:017
10. Contractor Performance Evaluation (2 sheets) CMO:018
11. Contingency Transfer Approval (EADOC Software)

Forms are available at <https://www.leegov.com/procurement/forms>

End of Exhibit C

## EXHIBIT D Pre-Construction Proposal



EXHIBIT D  
PRECONSTRUCTION PROPOSAL

Owen-Ames-Kimball Company 11941 Fairway Lakes Drive, Fort Myers, Florida 33913-8338 Ph 239-561-4141 • Fax 239-561-1996

Department of Facilities Construction and Management  
1500 Monroe Street, 4th Floor  
Fort Myers, Florida 33901  
Attn: Ms. Silvana Kee

December 7, 2018

RE: Libraries ADA Upgrade

Dear Ms. Kee,

In regard to the above referenced project, Owen-Ames-Kimball Company agrees to a preconstruction fee of Three Thousand and No/100 Dollars (\$3,000.00) as applied through the Lee County construction management agreement format.

The list of services included in our Preconstruction Services scope of work are:

**Master Schedule Development & Management** - We will create a master schedule which will incorporate the design process, permitting, owner provided items and construction into a single schedule. Construction schedules will show a critical path schedule for all construction related activities and tasks.

**Cost Management / Value Engineering** — Services will include budgeting on 90% drawings and a GMP based on 100% drawings. We will work with the design team and involved subcontractors to recommend products and building techniques best suited for the project and maintaining budget.

**Precon / Design Phase Active Participation** — O-A-K will attend all preconstruction meetings as required prior to GMP.

**Logistics Planning** – Early in design, we will develop a logistics and site utilization plan that graphically demonstrates construction access, construction traffic flow, staging, security, etc.

**Develop Comprehensive Scopes of Work** - We will develop project specific detailed scopes of work by trade for use in establishing GMP.

We appreciate and look forward to this opportunity to complete the Libraries ADA Upgrades Project.

Date: 2018.12.07  
15:39:05 -05'00'

Alesha Watchowski  
Project Manager  
Owen-Ames-Kimball Company