



CONSTRUCTION MANAGER AT RISK CONTRACT

BETWEEN

**CITY OF PENSACOLA
(Owner)**

AND

**BRASFIELD & GORRIE, L.L.C.
(Construction Manager at Risk)**

PROJECT:

**VT MOBILE AEROSPACE ENGINEERING, INC.
PROJECT TITAN ELEMENT 1 MRO FACILITIES
AT PENSACOLA INTERNATIONAL AIRPORT**

THIS CONTRACT is made and entered into this 28 day of February 2020 by and between **CITY OF PENSACOLA**, a Florida municipal corporation, hereinafter designated the "Owner" and **BRASFIELD & GORRIE, L.L.C.**, a Delaware limited liability company,, hereinafter designated the "Construction Manager".

RECITALS

- A. The Mayor of the City of Pensacola is authorized and empowered to execute this Contract.
- B. Owner intends to construct certain aircraft maintenance, repair and overhaul facilities at Pensacola International Airport (the "Airport") to be leased to and occupied by VT Mobile Aerospace Engineering, Inc. ("Tenant"), such facilities to include without limitation three maintenance, repair and overhaul ("MRO") hangar facilities, support services centers, administrative office building, drives, parking lots, taxiways and aprons, being the "Project" as defined below.
- C. Owner has entered into a contract with Atkins North America, Inc., a Florida corporation, hereinafter referred to as the "Design Professional", to design the Project.
- D. Owner has entered into a contract with Mott MacDonald Florida, LLC, a Florida limited liability company, hereinafter referred to as the "Construction Administrator", to perform construction administration services for the Project.
- E. The Construction Manager has represented to Owner its ability to provide design phase services and to construct the Project.
- F. Based on this representation, Owner desires to enter into this Contract with the Construction Manager for the design and construction phase services identified in this Contract.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between Owner and the Construction Manager as follows:

ARTICLE 1 -TERMS AND DEFINITIONS

1.1 As used in this Contract and the other Contract Documents, the following terms shall have the indicated meanings, unless another definition is clearly required or expressly provided elsewhere in a Contract Document:

Addenda - Written or graphic instruments issued by Owner prior to the submittal of the GMP Proposal, which clarify, correct or change the GMP Proposal requirements.

Airport - Pensacola International Airport in Pensacola, Florida, as it presently exists and as it may be modified in the future.

Change Directive – A written order directing a change in the Work and proposing a change to the Contract Price and/or Contract Time.

Change Order or Amendment - A written instrument issued after execution of the Contract Documents signed by Owner and Construction Manager, stating their agreement upon (1) all of the following: the addition to, deletion of, or revision in the Work, the scope of the Construction Manager's services under the Contract Documents, or the Deliverables; the amount, if any, of the adjustment to the Contract Price; and the extent, if any, of the adjustment to the Contract Time; or (2) modifications of other terms of the Contract Documents.

City – The City of Pensacola, a Florida municipal corporation.

Construction Administrator - The professional organization with which Owner will contract to provide construction administration services for the Project.

Construction Documents – The plans, specifications and drawings prepared by the Design Professional, including without limitation the Plans, the Specifications, and the Project Manual, after correcting for permit review requirements.

Construction Manager - The Construction Manager at Risk for the Project, being the construction management firm of Brasfield & Gorrie, L.L.C., which is a party to this Contract.

Construction Manager's Contingency - A fund to cover cost growth during the Project, the amount of which for Element 1 will be one and three quarters percent (1.75%) of the Cost of the Work based on GMP pricing of 95% design documents. Use and management of the Construction Manager's Contingency is controlled by Section 2.7.

Construction Manager's Fee – The Construction Manager's administrative costs, overhead and profit, whether at the Construction Manager's principal or branch offices. The Construction Manager's Fee for Element 1 will be four and one quarter percent (4.25%) of the sum of the Cost of the Work and the Construction Manager's Contingency.

Construction Manager's Representative – The employee of Construction Manager designated in writing by Construction Manager as its representative for purposes of the Contract. Unless changed by a written document delivered to Owner's Representative, the Construction Manager's Representative shall be Michael Tortorici.

Construction Schedule – The schedule for construction of the Project, prepared and maintained by Construction Manager in accordance with this Contract, using the Critical Path Method, indicating the sequence of all activities required for the prosecution and completion of construction of the Project, the interdependence of each activity, and the Critical Path.

Contract - This written agreement signed by Owner and Construction Manager, together with all future Change Orders and Amendments hereto.

Contract Documents – The Construction Documents, Project Manual including Plans and Specifications, any Addenda to the Project Manual, this Contract, Addenda, Change Orders, Amendments, the Performance Bond, the Payment Bond, and the Notice(s) to Proceed, are the documents which are collectively referred to as the Contract Documents.

Contract Price: - The lesser of the sum of the items listed in Section 10.1 or the amount established as the Guaranteed Maximum Price (GMP), as may be amended by Change Order.

Contract Time - The time between the date of the Notice to Proceed for commencement of construction and the date for substantial completion, including any milestone dates thereof, established in this Contract, as may be amended by Change Order.

Controlling Work Items or Critical Activities – The activity or work item on the Critical Path having the least amount of total Float. The controlling item of work may also be referred to as a Critical Activity.

Cost of the Work - The direct costs necessarily incurred by the Construction Manager in the proper performance of the Work or any specified portion of the Work. The Cost of the Work shall include without limitation direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees (if not paid for by City), materials testing, and related items. The Cost of the Work shall not include the Construction Manager's Fee, Construction Manager's Contingency, General Conditions Cost, or Taxes. "Cost of the Work" is further defined in Section 10.3 and the matrix attached hereto as Exhibit "E".

Critical Path - The sequence of activities from the start of the Work to the Substantial Completion of the Work, being the longest continuous path of work activities.

Day - Calendar day unless otherwise specifically stated in the Contract Documents.

Deliverables - The work products prepared and provided by the Construction Manager in performing the scope of Work described in this Contract. Some of the major deliverables to be prepared and provided by the Construction Manager during the design phase may include but are not limited to: Construction Management Plan, Constructability Review, Construction Schedule, Schedule of Values, Value Analysis, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Statement of Proposed MBE, DBE, and SBE Utilization, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

Design Professional - The professional organization with which Owner will contract to provide design services for the Project.

Element 1: The MRO hangar facility (sometimes referred to as Hangar 2) and related taxiways, aprons, driveways, and parking lots, as generally described in Exhibit "A" hereto, to be constructed in the northeast quadrant of the Airport airfield adjacent to the existing MRO hangar (sometimes referred to as Hangar 1) pursuant to the Contract Documents. Unless the parties hereafter enter into Change Orders and/or Amendments to the contrary, the Project and the Work shall consist of only Element 1.

Element 2: Two MRO hangar facilities, which may or may not be attached to each other (sometimes referred to as Hangars 3 and 4, a support services center, which may or may not be attached to one or both of Hangars 3 and 4)), an administrative office building, and related taxiways, aprons, driveways, and parking lots, as generally described in Exhibit "A" hereto, which may be constructed in the northwest quadrant of the Airport airfield. Owner and Construction Manager may at any time and from time to time enter into Change Orders and/or Amendments to add the construction of all or any part of Element 2 to this Contract subject to such terms and conditions as the parties shall mutually agree.

Field Order: A written order which orders minor changes in the Work in accordance with Section 9.5 but which does not involve a change in the Contract Price or Contract Time.

Final Certificate of Payment: A certification to Owner by the Construction Administrator and Design Professional that the Work has achieved Final Completion.

Final Completion: The date certified by Construction Administrator and Design Professional in the Final Certificate of Payment upon which all conditions and requirements of any permits and regulatory agencies have been satisfied; the documents required by the Contract have been received by Construction Administrator; any other documents required to be provided by Construction Manager have been received by Construction Administrator; and to the best of Design Professional's and Construction Administrator's information and belief the Work defined herein has been fully completed in accordance with the requirements, terms and conditions of the Contract Documents.

Float - The number of Days by which the finish of an activity can be delayed. Two kinds of Float are possible: Total Float is the number of Days by which the finish of an activity can be delayed without affecting the Substantial Completion date or an intermediate deadline (constraint). Free Float is the number of Days by which the finish of an activity can be delayed without affecting its earlier successor.

General Conditions Costs – The items included in the General Conditions Costs forth in the list attached hereto as Exhibit "C" and in the matrix attached hereto as Exhibit "E", plus premiums for insurance required to be provided by Construction Manager and premiums for the Performance Bond and the Payment Bond. The total General Conditions Costs for Element 1 is the fixed, lump sum amount of \$2,985,220, plus premiums for insurance required to be provided by Construction Manager and premiums for the Performance Bond and the Payment Bond. Such fixed, lump sum amount shall not be adjusted except as provided in Section 2.7.2.2, Section 9.6.1, or Section 9.6.2.

The aggregate premiums for the Performance Bond and the Payment Bond shall be 0.62% of the GMP, and the insurance premiums shall be 1.54 % of the GMP.

GMP Plans and Specifications - The 95% set of Plans and Specifications provided pursuant to Section 2.7.6 upon which a Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price or GMP - The sum of the maximum Cost of the Work, Construction Manager's Fee, General Conditions Costs, sales tax, and Construction Manager's Contingency for the entire Work or for any portion of the Work designated by Owner.

Guaranteed Maximum Price Amendment – Each Amendment of this Contract establishing the Guaranteed Maximum Price for the entire Work or for any portion of the Work designated by Owner and the related Contract Time and other provisions required by this Contract.

Guaranteed Maximum Price (GMP) Proposal - Each offer or proposal of the Construction Manager submitted on the prescribed form setting forth a proposed GMP for the entire Work for any portion of the Work designated by Owner.

Holidays –The following holidays that are observed by Owner or the Construction Manager: New Year's Day, Martin Luther King, Jr. Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the Day after, Christmas Eve, Christmas Day, and the Day after Christmas Day, and New Year's Eve. If any of the foregoing holidays occur on a Saturday or Sunday, the immediately adjacent weekday will be observed as the holiday.

Initiation Date – The date upon which the Contract Time commences for the construction phase of the Project.

Inspector – Any authorized representative or employee of the Construction Administrator, Design Professional or City assigned to make necessary inspections of materials furnished by Construction Manager and of the Work performed by Construction Manager.

Laws and Regulations; Laws or Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Materials – Materials incorporated in this Project, or used or consumed in the performance of the Work.

Normal Work Day – 6:00 a.m. to 7:00 p.m. each Monday thru Friday, excluding Holidays.

Notice to Proceed - A written notice given by City to the Construction Manager for a specific date on which the Construction Manager will start to perform all or a specified portion of the Construction Manager's obligations under this Contract. The Notice to Proceed for the

construction phase of the Project shall specify the Initiation Date, which shall be no sooner than fourteen (14) days after the Notice to Proceed is delivered to the Construction Manager.

Owner - The City, which is a party hereto and for which this Contract is to be performed. In all respects hereunder, Owner's performance is pursuant to Owner's position as the owner of a construction project. In the event that the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to Owner's police power and authority as a governmental body and shall not be attributable in any manner to City as a party to this Contract. Nothing contained in this Contract shall be construed or deemed to apply to, prohibit, or restrict Owner's exercise of its police power and authority as a governmental body. By entering into this Contract, Owner recognizes that, except if and to the extent otherwise expressly provided in this Contract, it is waiving sovereign immunity as to the enforcement of its legal obligations under the express terms of this Contract, but no further.

Owner Representative – The Director or, if none, the Interim Director, of the Airport or his or her designee, or some other employee expressly designated as Owner Representative in writing by the Mayor of the City, concerning the Contract Documents.

Owner's Contingency - A fund to cover cost growth during the Project used at the discretion of Owner usually for costs that result from City directed changes or unforeseen site conditions. The amount of the Owner's Contingency will be set by Owner and will be in addition to the project costs included in the Construction Manager's GMP packages. Use and management of the Owner's Contingency is described in Section 2.7.

Payment Bond. The Payment Bond required by Article 29.

Payment Request - The form that is accepted by Owner and used by the Construction Manager in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents or Owner.

Performance Bond – The Performance Bond required by Article 29.

Plans - Documents which visually represent the scope, extent and character of the Work to be furnished and performed by the Construction Manager during the construction phase and which have been prepared or approved by the Design Professional and Owner, including without limitation the official graphic representations of the Project which are a part of the Project Manual or the Contract Documents and drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g. concept verification drawings, early release packages design drawings, detailed design drawings at 60% and 95%, and 100% "Issued for Construction" design documents); provided, however that Shop Drawings that are clearly labeled "*not for construction*" are not included in the term "Plans".

Pricing Documents – The set of documents upon which a GMP is negotiated, comprised of the following: (i) the Project Manual consisting of the set of Plans, Specifications, and Division-1 General Requirements, Special Provisions and Mandatory Requirements, (ii) the Estimated Construction Manager's Direct Construction Cost (including unit prices and quantities and explanatory notes), (iii) Construction Manager's General Condition Items, (iv) schedules developed by Construction Manager and approved by the Construction Administrator, and any other documents or exhibits utilized to derive the GMP or sub-GMP, as the case may be.

Project – The construction project described in the Contract Documents, including the Work described therein and as described in Exhibit "A" attached. Unless the parties hereafter enter into Change Orders and/or Amendments to the contrary, the Project and the Work shall consist of only Element 1. However, Owner and Construction Manager may at any time and from time to time enter into Change Orders and/or Amendments to add the construction of all or any part of Element 2 to this Contract subject to such terms and conditions as the parties shall mutually agree.

Project Manual – The official documents setting forth information and requirements; contract forms, bonds, and certificates; general, special, and supplementary conditions of the Contract Documents; the Specifications; and the Plans.

Project Schedule – The overall master project schedule, prepared and maintained by Construction Administrator using the Critical Path Method, indicating the sequence of all activities required for the prosecution and completion of the Project, the interdependence of each activity, and the Critical Path. The Project Schedule will incorporate the Construction Schedule prepared and maintained by Construction Manager in accordance with this Contract.

Project Team - Collectively, Owner, Owner's Representative, Construction Administrator, Design Professional, Construction Manager, and other stakeholders who are responsible for making decisions regarding the Project.

Schedule of Values - Document required for construction phase of Contract, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any segment of the Work having a separate specified Contract Price.

Shop Drawings - All drawings, diagrams, schedules and other data specifically prepared for the Work by the Construction Manager or a Subconsultant, Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

Site - The land or premises on which the Project is located.

Specifications - The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subconsultant - A person, firm or corporation having a contract with the Construction Manager to furnish services required as its independent professional associate or consultant with respect to the Project.

Subcontractor – A person, firm or corporation having a direct contract with Construction Manager including one who furnishes material manufactured to a special design according to the Project Manual for this work, but does not include one who merely furnishes material not so manufactured.

Sub-Guaranteed Maximum Price (Sub-GMP) – The Construction Manager shall divide the GMP into separate sub-GMPs if Owner so directs. The Construction Manager shall make recommendations to Owner as to desirable sub-GMPs. Each sub-GMP is a distinct and separate GMP for purposes of this Contract.

Substantial Completion – The stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Tenant can occupy or utilize the Work for its intended use. A Certificate of Occupancy must be issued for Substantial Completion to be achieved; however, the issuance of a Certificate of Occupancy or the date thereof is not determinative of the achievement of Substantial Completion.

Supplier - A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with Construction Manager or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by Construction Manager or any Subcontractor.

Surety – The surety company which is bound by the Performance Bond and the Payment Bond with and for Construction Manager who is primarily liable, and which surety company is responsible for Construction Manager's acceptable performance of work under the Contract and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.

Taxes - All federal, state, municipal, sales, use, consumer, and other taxes, as applicable to the Project, all with respect to services performed or materials furnished for the Work.

Tenant – VT Mobile Aerospace Engineering, Inc.

Work – The construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Construction Manager to fulfill Construction Manager's obligations under the Contract Documents. Unless the parties hereafter enter into Change Orders and/or Amendments to the contrary, the Work shall consist of the construction only of Element 1. However, Owner and Construction Manager may at any time and from time to time enter into Change Orders and/or Amendments to add the construction of all or any part of Element 2 to this Contract subject to such terms and conditions as the parties shall mutually agree.

ARTICLE 2 - GENERAL DESIGN PHASE SERVICES

2.1 GENERAL

- 2.1.1 The Construction Manager shall provide Design Phase Services for the Project as specified in this Contract. Design Phase Services shall be undertaken only upon Owner's issuance to the Construction Manager of a Notice to Proceed for all or a specified portion of such Design Phase Services. The Construction Manager, to further the interests of Owner, shall perform the services required by, and in accordance with this Contract, to the satisfaction of the Airport Director or his representative, exercising the degree of care, skill and judgment a professional construction manager with similar experience and expertise as Construction Manager and performing similar services would exercise at such time, under similar conditions; however, by performing these services, the Construction Manager does not become responsible for the Project design. The Construction Manager shall, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice.
- 2.1.2 As a participating member of the Project Team, the Construction Manager will provide to Owner, Construction Administrator and Design Professional a written evaluation of Owner's Project Program and Project Budget, each in terms of the other, with recommendations as to the appropriateness of each.
- 2.1.3 The Construction Manager will attend Project Team meetings which may include, but are not limited to, biweekly (through 60% design) design review meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions (if required by Owner).
- 2.1.4 The Construction Manager will provide design phase services, described herein, in a proactive manner and consistent with the intent of the most current Plans and Specifications. The Construction Manager will promptly notify Owner in writing whenever the Construction Manager determines that any Plans or Specifications are insufficient for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Construction Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established. However, by performing these services, the Construction Manager does not become responsible for design.
- 2.1.5 The Construction Manager, when requested by Owner, will attend, make presentations and participate as may be appropriate in public agency and or community meetings germane to the Project. The Construction Manager will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 The Construction Manager shall prepare a Construction Management Plan which shall include the Construction Manager's professional opinions concerning: (a) Project milestone dates and the Construction Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.
- 2.2.2 The Construction Manager shall add detail to its previous version of the Construction Management Plan to keep it current throughout the design phase, so that the Construction Management Plan is ready for implementation at the start of the construction phase. The update/revisions shall take into account (a) revisions in Plans and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by Owner, Design Professional or the Construction Manager, (c) unresolved construction permitting issues, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by Owner.
- 2.2.3 The Construction Manager shall submit its plans for mobilization for providing field offices for Construction Manager and Construction Administrator. Such plan is to be submitted to Owner through Construction Administrator within 14 days after Notice-to-Proceed.
- 2.2.4 The Construction Manager shall submit a plan for hurricane preparedness to be reviewed and approved by Owner.

2.3 CONSTRUCTION SCHEDULE

- 2.3.1 The fundamental purpose of the "Construction Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the contractors, subcontractors, vendors and suppliers to be utilized for structuring of the Project Schedule prepared by Construction Administrator. Each Project Team member is responsible for its compliance with the Construction Schedule requirements. The Construction Manager will, however, develop and maintain the "Construction Schedule" on behalf of his Project Team based on input from the other entities with whom the Construction Manager has entered into a Construction Contract. The Construction Schedule will be consistent with the most recent revised/updated Construction Management Plan. The Construction Schedule will use the Critical Path Method technique, unless required otherwise in writing by Owner. The Construction Manager will use scheduling software to develop the Construction Schedule that is acceptable to Owner.

The Construction Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Construction Schedule will indicate milestone dates for the phases once determined.

- 2.3.2. A preliminary Construction Schedule shall be provided with each GMP or sub-GMP, as the case may be, that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path. The baseline Construction Schedule shall be provided no later than thirty (30) days after the Initiation Date. Based on current information, the Construction Manager estimates that the time from the Initiation Date to the date of Substantial Completion will be 14 ½ months.
 - 2.3.2.1 The Critical Path Method diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities.
 - 2.3.2.2 The Critical Path Method diagram schedule shall indicate all relationships between activities.
 - 2.3.2.3 The activities making up the schedule shall be sufficiently detailed to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
 - 2.3.2.4 The Critical Path Method diagram schedule shall be based upon activities, which would coincide with the schedule of values.
 - 2.3.2.5 The Critical Path Method diagram schedule shall show all critical or long lead time (30 days or greater) submittals associated with each work activity and the review time for each submittal.
 - 2.3.2.6 The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the Construction Manager activities.
 - 2.3.2.7 The schedule shall include a critical path activity that reflects the allowance for inclement weather and rain delay during the performance of the Contract in accordance with Section 8.1.6.
- 2.3.3 The Construction Schedule shall consider Owner's and the Tenant's occupancy requirements and Contract Time.
- 2.3.4 Float time shall be as prescribed below:
 - 2.3.4.1 Float is not for the exclusive use of either Owner or the Construction Manager, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and completion dates, subject to the terms and constraints of this Contract.

- 2.3.4.2 The use of Float suppression techniques, such as preferential sequencing (arranging Critical Path through activities more susceptible to Owner-caused delay), extending activity duration estimates to consume available Float, special lead/lag logic constraints, zero total or free Float constraints, extended activity times, or imposing constraint dates other than as required by the Contract Documents, is expressly prohibited and shall be cause for Owner's rejection of the Construction Schedule or updates. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid (if delay damages are otherwise payable under Section 8.1.7) unless and until a delay occurs which extends the Work beyond the Substantial Completion date. In no event shall the Construction Manager's use of Float be allowed or deemed to convert a non-critical path activity to a critical path activity.
- 2.3.4.3 Since Float time within the schedule is jointly owned, the Construction Manager shall not be entitled to receive a time extension or delay damages (if delay damages are otherwise payable under Section 8.1.7) for an Owner-caused delay unless the Owner-caused delaying event extends the Critical Path as measured on the date the delay commences.
- 2.3.5 The Construction Schedule will be updated and maintained by the Construction Manager throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the Construction Manager's plan for the performance of the construction phase Work. The Construction Manager will provide updates and/or revisions to the Construction Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The Construction Manager will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.3.6 When phased construction is deemed appropriate and Owner approves, the Construction Manager will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Construction Schedule and/or Cost of the Work. The Construction Manager will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1 The Construction Manager will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposal and/or the Construction Schedule.
- 2.4.2 The Construction Manager will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the Construction Manager to construct the Project. Before initiating construction operations, the Construction Manager may request additional

investigations in its GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.

- 2.4.3 The Construction Manager will meet with the Project Team as required to review designs during their development. The Construction Manager will familiarize itself with the evolving documents through the various design phases. The Construction Manager will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems and, labor and material availability. The Construction Manager will furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as concerns that exist with respect to coordination of the Plans and Specifications. The Construction Manager will recommend cost effective alternatives. For the avoidance of doubt, by providing these recommendations and the reviews described below, the Construction Manager shall not be responsible for the Project design.
- 2.4.4 The Construction Manager will routinely conduct constructability and bidability reviews of the Plans and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of work of Subcontractors and Suppliers.
 - 2.4.4.1 Constructability Reviews: The Construction Manager will evaluate whether (a) the Plans and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Plans and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of work required by or inferable from the Plans and Specifications are practicable, and (g) the design has taken into consideration, efficiency issues concerning; access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.
 - 2.4.4.2 Bidability Reviews: The Construction Manager will check cross-references and complementary Plans and sections within the Specifications, and in general evaluate whether (a) the Plans and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well, or otherwise, in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.
 - 2.4.4.3 The results of the reviews will be provided to Owner in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Plans and Specifications with notations and recommendations made on the Plans, Specifications and other documents. If requested by Owner, the Construction Manager will meet with Owner, Construction Administrator and Design Professional to discuss any findings and review reports.

- 2.4.4.4 The Construction Manager's reviews will be from a contractor's perspective, and though it will attempt to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Plans and Specifications will remain with the Design Professional and not the Construction Manager.
- 2.4.5 Notification of Variance or Deficiency: It is the Construction Manager's responsibility to assist the Design Professional in ascertaining that, in the Construction Manager's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the Construction Manager recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.
- 2.4.6 Value Analysis: The Construction Manager will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design, means and methods, scope, and other changes that have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements. If the Project Team agrees, the Construction Manager in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Plans and Specifications. The Construction Manager will include the cost of the alternatives into the cost estimate and any GMP Proposals.

2.5 COST ESTIMATES

- 2.5.1 Except as otherwise provided in Section 2.7.5 or unless otherwise agreed to by both parties, the Construction Manager shall provide a detailed cost estimate and a written review of the documents within 30 days after receipt of the documents for each of the following phases of design:
1. Concept Verification / Early Release Packages
 2. 60% Design Documents / Preliminary GMP
 3. 95% Design Documents / GMP

The Design Professional and Construction Manager shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, Owner will make the final determination.

- 2.5.2 If any estimate submitted to Owner exceeds previously accepted estimates (as amended by tracking reports contemplated by Section 2.5.3) or Owner's Project budget, the Construction

Manager shall make appropriate recommendations on methods and materials to Owner and Design Professional that he believes will bring the Project back into the Project budget.

- 2.5.3 In between these milestone estimates, the Construction Manager shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering or scope changes as well as tracking price escalations to major components. It shall be the responsibility of the Construction Manager to keep Owner, Construction Administrator and Design Professional informed as to the major trend changes in costs relative to Owner's budget.

2.6 DISPARITY GOALS PROGRAM

- 2.6.1 Goal Setting Meeting: The Construction Manager, based on information provided by the Construction Administrator, Design Professional and City and prior to preparing the GMP Proposal described below, will meet with Owner to obtain Minority, Disadvantaged, and Women-owned Business Enterprise goals. The Construction Manager will identify the estimated value of Work to be performed by each Subcontractor/Supplier in Construction Specifications Institute (CSI) format. The minimum goals for Work to be performed during the construction phase by MBE, DBE, or SBE firms will then be established and expressed as percentages of appropriate construction costs for the Project.
- 2.6.2 Documentation: The Construction Manager will submit the following documents with the GMP proposal package if subcontractors have been selected prior to submission of the GMP proposal. If the GMP proposal is submitted prior to subcontractor selection, the Construction Manager will submit these documents before the selected MBE, DBE, or SBE subcontractor commences onsite construction operations.
- 2.6.2.1 In a tabulation form, the Construction Manager shall list all proposed MBE, DBE, or SBE subcontractors who will be performing work under the respective GMP package. The Construction Manager will list the name of the firm, the value of work to be performed by that firm, and the estimated percentage of the total Project construction cost to be performed by that firm. When received by Owner, these forms will be sent to the Purchasing Department to verify that the firms are properly certified within Owner's system.
- 2.6.2.2 Letters of Intent to Perform as a Subcontractor. These letters must be submitted for each Subcontractor or Supplier listed on the "Contractor's Statement of Proposed MBE, DBE, or SBE Utilization" form. These letters are prepared by the respective subcontractors and indicate the subcontractors' intent to perform the work as detailed on the Construction Manager's Utilization form for the indicated price.
- 2.6.3 Firms certified by Owner of Pensacola are eligible to fulfill MBE/DBE/SBE subcontracting goals for City of Pensacola projects. The Construction Manager will require that Subcontractors that the Construction Manager proposes to use on this Project are properly certified with Owner at the time of receipt of bids for their respective bid package.

2.7 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

- 2.7.1 The proposed GMP for the Project will be presented in a format acceptable to Owner, including separate sub-GMPs (see Exhibits “B”, “C”, and “D” attached). Owner may request GMP Proposals for all or any portion of the Work. Any GMP Proposals submitted by the Construction Manager will be based on and consistent with the current updated/revised cost estimate at the time of the request, the associated estimates for construction costs include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- 2.7.2 The Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.
- 2.7.2.1 The Cost of the Work consists of actual costs and agreed rates and is a not-to-exceed, reimbursable amount.
- 2.7.2.2 The General Conditions Costs is a fixed, lump sum amount, which will include the premiums for insurance required to be provided by Construction Manager and premiums for the Performance Bond and the Payment Bond based on the full GMP, and which will be shown as a separate line item in the GMP Proposal for the Work and in the GMP Amendment. In the event that the scope of the Work changes such that additional staffing is required, the Construction Manager shall be entitled to an equitable adjustment in the General Conditions Costs.
- 2.7.2.3 The Construction Manager’s Fee is four and one quarter percent (4.25%) of the sum of the Cost of the Work and the Construction Manager’s Contingency and shall be shown as a separate line item in the GMP Proposal for the Work and in the GMP Amendment. Unless otherwise indicated in the matrix attached hereto as Exhibit “E”, salaries or other compensation of the Construction Manager’s employees who are stationed or principally located in the office and branch offices are included in the Construction Manager’s Fee. Unless otherwise indicated in the matrix attached hereto as Exhibit “E”, cost related to principal office personnel who are stationed or principally located at the field office in a capacity directly related to performance of the work is not included in the “Construction Manager’s Fee” and will be included in the Cost of Work. Specifically, the items included in the Construction Manager’s Fee and in the Cost of the Work are shown in the matrix attached hereto as Exhibit “E”.
- 2.7.2.4 The Construction Manager’s Contingency shall be one and three quarters percent (1.75%) of the Cost of the Work and shall be shown a separate line item in the GMP Proposal for the Work and in the GMP Amendment. The Construction Manager’s Contingency is an amount the Construction Manager may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of Owner for increases in General Condition Costs. Construction Manager’s Contingency is assumed to be a direct project cost, and therefore, the Construction Manager’s mark up for the Construction Manager’s Contingency is included in the Construction Manager’s Fee.
- 2.7.2.5 Taxes are deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely

scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount. Taxes are subject to the Construction Manager's mark up.

- 2.7.3 Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. The Percentage Mark Up for Construction Manager's Fee and Taxes will be applied by the Construction Manager at the time and to the extent that Owner's Contingency is used by Construction Manager.
- 2.7.4 The Construction Manager's Contingency is distinct and separate for each sub-GMP; however, any portion of the Construction Manager's Contingency for a sub-GMP that is not used may be reallocated by the Construction Manager to other sub-GMPs. The amount of Construction Manager Contingency for each sub-GMP amendment will be one and three quarters percent (1.75%) of the Cost of the Work under each such sub-GMP.
- 2.7.5 Promptly after Owner's issuance to Construction Manager of the Notice to Proceed with pre-construction services and the Construction Manager's receipt from the Design Professional of the pre-engineered metal building bridging documents, the Construction Manager shall issue and publicly advertise a Request for Qualifications, in form and substance acceptable to Owner, directed to potential suppliers of the pre-engineered metal hangar building (including hangar doors) required for Element 1. The Construction Manager shall then invite, after input from Owner, three to five qualified firms to provide general costs and time estimates (including engineering costs) and to be interviewed by the Construction Manager and Owner. The Construction Manager, after giving due consideration to input from Owner and subject to Owner's written consent which shall not be unreasonably withheld or delayed, shall then select the most qualified firm for such portion of the Work. However, the Construction Manager shall not authorize such firm to begin engineering work until such firm has presented a firm cost for such engineering work that is acceptable to both the Construction Manager and Owner and Owner has issued a Notice to Proceed with such engineering work. In the event that Owner terminates this Contract, the agreed upon cost for such engineering work shall be paid by Owner in addition to any amounts due the Construction Manager hereunder; otherwise, the cost of such engineering work shall be payable by the Construction Manager and included in the GMP.
- 2.7.6 The Construction Manager, in preparing each GMP Proposal, will obtain from the Design Professional Construction Documents that have reached a minimum of 60% completion which include plans and specifications (including all revisions). The Construction Manager will prepare a preliminary GMP based on the 60% documents. Subsequently, the Construction Manager will obtain from the Design Professional Construction documents that have reached 95% completion of all plans and specifications. The Construction Manager will prepare a GMP Proposal based on the 95% documents. In both instances, the Construction Manager will mark the face of each document of each set upon which its proposed GMP is based. The marked 95% documents will be identified as the GMP Plans and Specifications. The Construction Manager will send one set of those documents to the Construction Administrator, keep one set and return the third set to the Design Professional. The City shall cause the Design Professional to also provide to the Construction Manager the 95% documents and the

100% (Issued for Construction) documents in Revit (for the building), Civil 3D (for the site), CADD, and PDF formats. All CADD files shall be delivered in the AutoCad Version format required by the City. The CADD layer guidelines recommended by the United States National CAD Standard (NCS), Version 6, and approved by the City shall be utilized. The Construction Manager understands that the Design Professional is obligated to provide AutoCad, Revit, and Civil 3D files only subject to the following stipulations to which the Construction Manager hereby agrees: Electronic data files are provided to the Construction Manager solely as a convenience and in an “as is” condition. Electronic data files are not considered part of the Contract Documents. The information contained in these electronic data files is for informational purposes only and cannot be modified without the knowledge and written consent of the Design Professional and the City. Differences may exist between the electronic files delivered and the printed hard copy Contract Documents. In the event that such a conflict is found, the hard copy documents, which are signed and sealed with the Design Professional’s Registration Stamp, shall be controlling and take precedence over the electronic version. Any such discrepancies shall not be the basis for a claim by the Construction Manager. The use of the information contained in electronic files is at the Construction Manager’s sole risk without liability or legal exposure to the Design Professional or the City.

- 2.7.7 A Construction Schedule will be a part of each GMP Proposal(s) and will reflect the GMP Plans and Specifications. Any such Construction Schedule will comply with the requirements of Section 2.3.
- 2.7.8 Intentionally left blank.
- 2.7.9 Cost Estimates and GMP Proposal(s) Review and Approval
 - 2.7.9.0 The Construction Manager will meet with Owner, Construction Administrator and Design Professional to review the initial estimate of costs prepared pursuant to Section 2.7.5 above and the written statement of its basis. In the event Owner discovers inconsistencies or inaccuracies in the information presented, the Construction Manager will make adjustments as necessary to the estimate of costs, its basis or both.
 - 2.7.9.1 The Construction Manager will meet with Owner, Construction Administrator and Design Professional to review the preliminary GMP(s) and GMP Proposal(s) and the written statement of its basis. In the event Owner discovers inconsistencies or inaccuracies in the information presented, the Construction Manager will make adjustments as necessary to the GMP Proposal, its basis or both.
 - 2.7.9.2 Owner, upon receipt of any GMP proposal from the Construction Manager, may submit the GMP Plans and Specifications to an independent third party for review and verification.
 - 2.7.9.3 Owner, in its sole and absolute discretion, may accept or reject the Construction Manager’s proposed GMP, whether or not the proposed GMP meets or exceeds the Project Budget.

2.7.9.4 Upon acceptance by Owner of the GMP for the Project, Owner and Construction Manager shall execute a Guaranteed Maximum Price Amendment to memorialize such agreement.

2.7.9.5 If during the review and negotiation of GMP Proposals design changes are required, Owner will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the Construction Manager. The Construction Manager will promptly notify the Design Professional and City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

2.8 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

2.8.1 There are two ways to select Subcontractors and major Suppliers (i.e., a Supplier whose contract amount exceeds \$200,000.00 or such lesser amount as may be required by the U. S. Economic Development Agency or the Florida Department of Transportation) prior to submission of a GMP Proposal. They are qualifications-based selection and competitive bidding. Except as noted below, the selection of Subcontractors/Suppliers is the responsibility of the Construction Manager. In any case, the Construction Manager is solely responsible for the performance of the selected Subcontractors or Suppliers. Further, the pre-engineering metal hangar building supplier shall be selected as set forth in Section 2.7.5 above.

2.8.2 Selection by qualifications only - Owner may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when the Construction Manager can demonstrate it is in the best interest of the Project.

2.8.2.1 Qualification based selection of a Subcontractor(s) or Supplier(s) shall only occur prior to the submittal of the GMP Proposal.

2.8.2.2 The Construction Manager will prepare a Subcontractor or Supplier selection plan and submit the plan to Owner for approval. The Construction Manager shall apply the plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide Owner with its review and recommendation.

2.8.2.3 The Construction Manager must receive City approval of the selected Subcontractor(s) or Supplier(s).

2.8.2.4 The Construction Manager will negotiate costs for services/supplies from each Subcontractor or Supplier selected under this method, the Construction Administrator shall participate in these negotiations. Approval of terms of negotiation by Owner shall be required prior to Construction Manager entering into a Contract with the sub-contractor

2.8.3 Selection by competitive bid and qualifications – Unless Owner approves self performance of work by the Construction Manager for a small portion of work (as determined by Owner in its discretion), all Work shall be competitively bid unless a Subcontractor or Supplier was selected pursuant to Section 2.8.2 above. Competitive bids may occur prior to or after the

GMP Proposal(s). Subcontracts and purchase orders involving amounts in excess of \$100,000 may be awarded only with the prior approval of the Construction Administrator.

- 2.8.3.1 The Construction Manager will develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by Owner and solicit bids for the various Work categories. The Construction Manager will identify the MBE, DBE, or SBE Subcontractors and Suppliers and during the bidding process keep Owner informed on the progress of meeting the desired MBE, DBE, or SBE goals. If there are not three qualified Subcontractors or Suppliers available for a specific trade or there are extenuating circumstances warranting such, the Construction Manager may request approval by Owner to submit less than three names. Without prior written notice to Owner, no change in the recommended Subcontractors or Suppliers will be allowed.
- 2.8.3.2 If Owner objects to any nominated Subcontractor or Supplier or to any self-performed Work for good reason, the Construction Manager will nominate a substitute Subcontractor or Supplier that is reasonably acceptable to Owner and the parties shall enter into an appropriate Change Order for any resulting difference in the Cost of the Work.
- 2.8.3.3 The Construction Manager will distribute Plans and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers.
- 2.8.3.4 If the Construction Manager desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The Construction Manager's bid will be evaluated in accordance with the process identified below. If events warrant and Owner concurs that in order to ensure compliance with the Construction Schedule and/or cost, the Construction Manager may self-perform the specific Work. In that event, the Construction Administrator may select either Construction Manager's price to perform the work or any one of subcontractors' proposals, and there shall be no application of a preferred subcontract cost differential.
- 2.8.3.5 The Construction Manager shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the Construction Manager, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor or Supplier bids will be done with Owner Representative in attendance to observe and witness the process. The Construction Manager will resolve any Subcontractor or Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.
- 2.8.4 The Construction Manager will be required to prepare two different reports on the subcontracting process.

- 2.8.4.1 Within fifteen days after each major Subcontractor or Supplier bid opening process, the Construction Manager will prepare a report for Owner's review and approval identifying the recommended Subcontractors or Supplier for each category of Work. The report will detail (a) the name of the recommended Subcontractor or Supplier and the amount of the Subcontractor or Supplier bid for each subagreement, (b) the sum of all recommended Subcontractor/Supplier bids received, (c) and trade work and its cost that the Construction Manager intends to self-perform, if any.
- 2.8.4.2 Upon completion of the Subcontractor or Supplier bidding process, the Construction Manager shall submit a summary report to Owner of the entire Subcontractor or Supplier selection process. The report will indicate, by bid process, all Subcontractors or Suppliers contacted to determine interest, the Subcontractors or Suppliers solicited, the bids received and costs negotiated, and the recommended Subcontractors or Suppliers for each category of Work.
- 2.8.5 The approved Subcontractors or Suppliers will provide a Schedule of Values with their bid proposals, which will be used to create the overall Schedule of Values for each segment of the Project.
- 2.8.6 If after receipt of sub-bids or after award of Subcontractors or Suppliers, Owner objects to any nominated Subcontractor or Supplier or to any self-performed Work for good reason, the Construction Manager will nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor or Supplier bids for the Work affected. Once such substitute Subcontractors or Suppliers are approved by Owner, the Construction Manager's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.
- 2.8.7 Promptly after submission of the GMP Proposal for the Work, Owner will conduct a pre-award conference with the Construction Manager and other Project Team members. At the pre-award conference, the Construction Manager will (a) review the nominated slate of Subcontractors or Suppliers and discuss any concerns with or objections that Owner has to any nominated Subcontractor or Supplier; (b) discuss City concerns relating to any proposed self-performed Work; (c) review the Construction Manager's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which Owner will agree to leave any portion of the remaining Contractor's Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of Commencement of the Contract time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of import.

ARTICLE 3 - PERIOD OF DESIGN PHASE SERVICES

- 3.1 The design phase services described in this Contract will be performed by Construction Manager in accordance with the most current update/revised Project Schedule. A material failure on the part of the Construction Manager to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by Owner.

- 3.1.1 Upon a material failure by the Construction Manager to adhere to the approved schedule, City may provide written notice to Construction Manager that it intends to terminate this Contract unless the problem cited is commenced to be cured within three days of Construction Manager's receipt of such notice and such cure is thereafter continuously and diligently prosecuted until completed.
- 3.2 If the date of performance of any obligation or the last day of any time period provided for in this Contract should fall on a Saturday, Sunday, or Holiday, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or Holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Local time) on the day of performance.

ARTICLE 4 - DESIGN SERVICES PHASE COMPENSATION; AND PAYMENTS

- 4.1 The Construction Manager's compensation for all design phase services for Element 1 of the Project shall be One Hundred Ninety-Five Thousand and 00/100 (\$195,000.00) Dollars.

Owner may withhold payment to such extent reasonably necessary as a result of (a) third party claims arising out of the design phase services of the Construction Manager and made against Owner and as verified by Owner within 30 days of receipt of said claim. Owner's release of payment to the Construction Manager after said claim does not relieve the Construction Manager from any liability or responsibility otherwise covered in the contract and subsequently arising out of said claim; (b) for the amount of any, over billing, overpayment, or fraud discovered upon audit; (c) failure to make payment prompt payments to sub-consultants; (d) payment request received which includes fees for unapproved sub-consultants; (e) the amount required to correct performance of services not in accordance with generally accepted standards of care of services by the Construction Manager or its sub-consultants. Owner's withholding of payments to Construction Manager shall not in any way relieve the Construction Manager of its obligations to continue to perform its services under this contract.

- 4.2 Payments. Progress payments for the design phase of Element 1 of the Project shall be paid as follows:
1. \$84,000 upon submission of cost estimate at completion of Concept Verification Phase;
 2. \$63,000 upon submission of preliminary GMP at completion of 60% Design Phase; and
 3. \$48,000 upon submission of GMP at completion of 95% Design Phase.

The Construction Manager's monthly billing shall be on a form approved by the Owner and shall include a cover sheet in which the following is shown:

1. Original amount.
2. The total previous amounts received.
3. The remaining balance to complete the Design Services Phase Project.
4. Amount Due.

Additionally, the monthly billing shall include, without limitation, a narrative of the work completed and a statement of Reimbursable Expenses incurred.

The Owner shall make payment to the Construction Manager in accordance with its standard billing and payment procedures and applicable Florida Statutes. Invoices must be received and approved by Owner by the 20th of month in order to be paid in City check cycle. Ordinarily Owner issues checks for payment of invoices on the 10th of each month. A complete and accurate billing from the Construction Manager must have been received and approved by the Construction Administrator and forwarded to the Office of the Airport Director by the last day of the month for consideration of payment on the 10th of the following month. Items received after the last day of the month will be processed in the following payment cycle.

- 4.3 Additional Services. Compensation for additional services, if requested by the Owner in writing, shall be for a fee as outlined in a supplemental agreement for such services duly executed by both parties.
- 4.4 Advance Approval of Additional Services. If the Owner requests additional services, a change order will be executed and the compensation set forth above will be adjusted as agreed by the parties.
- 4.5 The Construction Manager will pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the Construction Manager has received payment for those services from Owner. No retainage shall be held in conjunction with design phase services provided by the Construction Manager.
- 4.6 The Construction Manager agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances by Owner during the progress of any portion of the design phase services specified in this Contract. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the Construction Manager to proceed to complete any design phase services, in whole or in part after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of Owner of any of its legal rights herein.
- 4.7 If any design phase service(s) executed by the Construction Manager is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the Construction

Manager, the Construction Manager shall be paid for the services performed prior to the abandonment or suspension.

ARTICLE 5 - CONSTRUCTION PHASE SERVICES

- 5.1 The Construction Manager shall cause to be performed all of the Work required by the Contract Documents as revised or added to from time to time to reflect clarifications and approved changes.
- 5.2. The Work
- 5.2.1 It is the intent of City to describe in the Contract Documents a functionally complete Project to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied by the Construction Manager whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference is specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of bids. City shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.
- 5.2.2 The Construction Manager agrees that the Work shall be performed in a good and professional manner, free from defects in materials and workmanship, and that all Materials shall be new and approved by or acceptable to the Construction Administrator, except as otherwise expressly provided for in the Contract Documents. The Construction Manager shall cause all Materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing and equipping of the improvements.
- 5.2.3 The Construction Manager shall plan, record, and update, at least monthly, the construction schedule of the Work (the "Construction Schedule") utilizing the Critical Path Method ("CPM") of scheduling. As part of each GMP Proposal, the Construction Manager shall prepare and submit for the Construction Administrator's approval the Construction Schedule. It shall indicate the dates for the commencement and completion of the various stages of construction and shall be revised as required by the conditions of the Work, subject to the Construction Administrator's approval. The Construction Schedule shall encompass all of the work of all trades necessary for the construction of the Work and shall be sufficiently complete and comprehensive to enable progress to be monitored on a weekly basis.

5.2.4 Superintendence and Supervision

- 5.2.4.1 The Construction Manager shall keep on the Project during its progress, a competent English speaking superintendent or project manager (hereinafter referred to as "superintendent") and any necessary assistants, all satisfactory to the Construction Administrator. The superintendent must be approved by the Construction Administrator before the work begins and shall not be changed except with the written consent of Construction Administrator, unless the superintendent proves to be unsatisfactory to the Construction Manager and ceases to be in its employ in which case the replacement superintendent must be approved by the Construction Administrator. The superintendent shall represent the Construction Manager and all direction given to the superintendent shall be as binding as if given to the Construction Manager and will be confirmed in writing by Construction Administrator upon the written request of the Construction Manager.
- 5.2.4.2 Daily, the Construction Manager's superintendent shall record, at a minimum, the following information either in a bound log or electronically in a commonly accessible, shareable, reproducible, and permanent format: the day; date; weather conditions and how any weather condition affected the progress of the Work; time of commencement of work for the day; the work being performed; materials, labor, personnel, equipment and subcontractors at the Project site; visitors to the Project site including representatives of City and Construction Administrator; any conditions or occurrences encountered which impact the timely and efficient performance of the Work; and the time of termination of work for the day. All information shall be recorded in the daily log in ink, unless recorded electronically. The daily log shall be kept on the Project site and shall be available at all times for inspection and copying by City and Construction Administrator.
- 5.2.4.3 The Construction Administrator and the Construction Manager shall meet every week or as determined by the Construction Administrator, during the course of the Work to review and agree upon the work performed to date, establish the controlling items of work for the week and to discuss such other matters as may contribute to the successful completion of the Project. The Construction Administrator shall publish, keep, and distribute minutes and any comments thereto of each such meeting.
- 5.2.4.4 If the Construction Manager, at any time, finds any discrepancy between the Contract Documents and the physical conditions of the locality, or any errors, omissions, or discrepancies in the Project Manual, it shall be the Construction Manager's duty to immediately inform Construction Administrator, in writing, and Construction Administrator will promptly review the same. Any work done after such discovery, until authorized, will be done at the Construction Manager's sole risk.
- 5.2.4.5 The Construction Manager shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Construction Manager shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.
- 5.2.5 The Construction Manager shall check Plans, Specifications and other data to verify all dimensions, quantities and details shown and shall notify Construction Administrator of all errors, omissions and discrepancies found therein within three (3) calendar days of

discovery. The Construction Manager will not be allowed to take advantage of any error, omission or discrepancy. The Construction Manager shall be liable for damages resulting from errors, omissions or discrepancies in the Contract Documents if the Construction Manager recognized such error, omission or discrepancy and knowingly failed to report it to Construction Administrator.

5.2.6 Differing Site Conditions

5.2.6.1 In the event that during the course of the Work the Construction Manager encounters an underground utility that was not shown on the Contract Documents; or subsurface or concealed conditions at the Project site which differ materially from those shown on the Contract Documents, or disclosed in writing to Construction Manager prior to execution of the pertinent GMP Amendment, or ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents; or unknown physical conditions of the Project site of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents, the Construction Manager, without disturbing the conditions and before performing any work affected by such conditions, shall, no later than five (5) Days (excluding Saturdays, Sundays, and Holidays) after their discovery, notify Construction Administrator in writing of the existence of the aforesaid conditions and shall propose changes in the Contract Price or the Contract Time, or both, as a result of such differing site conditions. Construction Administrator shall, within three (3) Days (excluding Saturdays, Sundays, and Holidays) after receipt of the Construction Manager's written notice, investigate the site conditions identified by the Construction Manager. If, in the sole opinion of Construction Administrator, the conditions do materially so differ and cause an increase or decrease in the Construction Manager's cost of, or the time required for, the performance of any part of the Work, Construction Administrator shall recommend an equitable adjustment to the Contract Price, or the Contract Time, or both, which is subject to approval by Owner and the Construction Manager pursuant to Section 9.4 hereof. If Construction Administrator and the Construction Manager cannot agree on an adjustment in the Contract Price or Contract Time, the adjustment shall be determined by the Construction Administrator in accordance with Article 30. Should Construction Administrator determine that the conditions of the Project site are not so materially different as to justify a change in the terms of the Contract, Construction Administrator shall so notify City and the Construction Manager in writing, stating the reasons. The Construction Administrator's determination of differing site conditions is subject to Section 30.1.

5.2.6.2 No request by the Construction Manager for an equitable adjustment to the Contract under this provision shall be allowed unless the Construction Manager has given written notice in strict accordance with the provisions of Section 5.2.6.1. Failure to give such written notice shall constitute an unequivocal waiver of any equitable adjustment under this provision.

5.2.6.3 No request for an equitable adjustment or change to the Contract Price or Contract Time for differing site conditions shall be allowed if made after the date certified by Construction Administrator as the date of Substantial Completion.

5.2.7 Shop Drawings

- 5.2.7.1 The Construction Manager shall submit Shop Drawings as required by the Technical Specifications. The purpose of the Shop Drawings is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item and evidence of its compliance or noncompliance with the Contract Documents.
- 5.2.7.2 Within thirty (30) calendar days after the Project Initiation Date specified in the Notice to Proceed, the Construction Manager shall submit to Construction Administrator a list of preliminary data on items for which Shop Drawings are to be submitted and shall identify the critical items. Approval of this list ("the Schedule of Submissions") by Construction Administrator shall in no way relieve the Construction Manager from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. This procedure is required in order to expedite final approval of Shop Drawings.
- 5.2.7.3 After the approval of the list of items required in Section 5.2.7.2 above, the Construction Manager shall promptly request Shop Drawings from the various manufacturers, fabricators, and suppliers.
- 5.2.7.4 The Construction Manager shall thoroughly review and check the Shop Drawings and each and every copy shall show its approval thereon.
- 5.2.7.5 If the Shop Drawings show or indicate departures from the Contract requirements, the Construction Manager shall make specific mention thereof in its letter of transmittal to the Construction Administrator and the party submitting the Shop Drawings. Neither such letter of transmittal pointing out such departures nor the failure to point out such departures shall relieve the Construction Manager from its responsibility to comply with the Contract Documents.
- 5.2.7.6 Provided such submittals are in conformity with the approved Schedule of Submission, Construction Administrator shall coordinate review and approval of Shop Drawings by Design Professional within fifteen (15) Days from the date received, unless said Shop Drawings are rejected for material reasons; provided that Construction Administrator and Design Professional shall make good faith efforts to respond sooner than fifteen (15) Days upon written notice from the Construction Manager that an expedited response is critical. Approval of Shop Drawings will be general and shall not relieve the Construction Manager of responsibility for the accuracy of such Shop Drawings, nor for the proper fitting and construction of the work, nor for the furnishing of materials or work required by the Contract Documents and not indicated on the Shop Drawings. No work called for by Shop Drawings shall be performed until the said Shop Drawings have been approved by Design Professional. Approval shall not relieve the Construction Manager from responsibility for errors or omissions of any sort on the Shop Drawings.
- 5.2.7.7 It is the Construction Manager's responsibility to reasonably assemble the Shop Drawings for all reasonably interconnecting and/or interdependent items, check them, and then make one submittal to Construction Administrator along with its comments as to

compliance, noncompliance, or features requiring special attention. No approval will be given for partial submittals of shop drawings for items which reasonably interconnect and/or are reasonably interdependent.

5.2.7.8 If catalog sheets or prints of manufacturer's standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink.

5.2.7.9 The Construction Manager shall submit the number of copies required by Construction Administrator. Resubmissions of Shop Drawings shall be made in the same quantity until final approval is obtained.

5.2.7.10 The Construction Manager shall keep one set of Shop Drawings marked with Design Professional's approval at the job site at all times.

5.2.7.11 The Construction Manager acknowledges and agrees that the Design Professional shall be obligated to review and comment on each shop drawing or technical submittal a maximum of three (3) times and that Construction Manager shall bear the cost of additional reviews.

5.2.8 Field Layout of the Work, Record Drawings and Equipment Data

5.2.8.1 The entire responsibility for establishing and maintaining line and grade in the field lies with the Construction Manager. The Construction Manager shall maintain an accurate and precise record of the location and elevation of all underground site utilities installed by the Construction Manager, sealed by a Professional Surveyor. The Construction Manager shall deliver these records in good order to Construction Administrator as each segment of the Work is completed. The cost of all such field layout and recording work is included in the prices bid for the appropriate items. All record drawings shall be made on reproducible paper.

5.2.8.2 The Construction Manager shall maintain in a safe place at the project site one record set of the Contract Documents in good order and marked currently to record all changes made during construction and an accurate and precise location of all portions of the Work sufficient for the preparation of accurate as-built drawings.

5.2.8.3 Prior to, and as a condition precedent to Final Payment, the Construction Manager shall submit to Construction Administrator the Construction Manager's record drawings or as-built drawings acceptable to Program Manager.

5.2.8.4 Concurrently with the turnover of any piece of equipment to Owner, the Construction Manager shall deliver to Construction Administrator for delivery to Owner all equipment data, along with its recommended spare parts list, maintenance manuals, manufacturer's warranties and operations manuals as may be required for Owner employees or agents to maintain and operate any equipment delivered as a part of the Work.

5.2.9 Inspection and Testing

5.2.9.1 Construction Administrator and City shall at all times have access to the Work, and the Construction Manager shall provide for use by the Construction Administrator Construction Manager's on-site construction trailer for such access and for inspecting, measuring and testing as is reasonably needed.

5.2.9.2 Should the Contract Documents, Construction Administrator's instructions, any laws, ordinances, or any public authority require any of the Work to be specially tested or approved, the Construction Manager shall provide and update weekly for the Construction Administrator a two (2) week "look-ahead" schedule denoting all activity to be performed and highlighting those that need testing and approval. If the testing or approval is to be made by an authority other than City, timely notice shall be given of the date fixed for such testing. Testing shall be made promptly, and where practicable, at the source of supply. If any of the Work is covered up without approval or consent of Construction Administrator, it must, if required by Construction Administrator, be uncovered for examination and properly restored at the Construction Manager's expense.

5.2.9.3 Reexamination of any of the Work may be ordered by Construction Administrator and if so ordered, the Work must be uncovered by the Construction Manager. If such Work is found to be in accordance with the Contract Documents, City shall pay the cost of reexamination and replacement by means of a change order. If such Work is not in accordance with the Contract Documents, the Construction Manager shall pay such cost as part of the GMP.

5.2.9.4 Inspectors shall have no authority to permit deviations from, or to relax any of the provisions of, the Contract Documents. No action of an inspector shall form the basis of a claim of delay to the Contract.

5.2.9.5 The payment of any compensation, whatever may be its character or form, or the giving of any gratuity or the granting of any favor by the Construction Manager to any inspector, directly or indirectly, is strictly prohibited, and any such act on the part of the Construction Manager will constitute a material breach of this Contract.

5.2.10 Taxes.

5.2.10.1 The Construction Manager shall pay all applicable Taxes required by law. The Construction Manager is responsible for reviewing the pertinent state statutes involving state Taxes and complying with all requirements.

5.2.10.2 Taxes shall be a reimbursable cost under Section 10.3.5 (6). All such Taxes shall be included in the GMP.

5.2.11 Permitted Work Hours. Construction Manager may perform work under this Contract only from 6:00 a.m. until 7:00 p.m., Mondays through Saturdays, but excluding Christmas Day, New Year's Day, Memorial Day and the Saturday prior to Memorial

Day, July 4, Labor Day and the Saturday prior to Labor Day, and Thanksgiving Day and the Friday and Saturday after Thanksgiving Day. No work shall be performed during any other hours, days or evenings except with the prior written consent of the Owner Representative and in accordance with applicable City ordinances.

- 5.2.12 The Construction Manager understands and agrees that the Design Professional is contractually obligated to respond only to legitimate requests for information and clarification of matters properly pertaining to or related to the design of the Project, as determined by the Construction Administrator. The Construction Administrator shall coordinate review and responses to requests for information by the Design Professional within ten (10) Days from the date received.

ARTICLE 6 - PRIORITY OF PROVISIONS

- 6.1 The Contract Documents shall be interpreted so as to eliminate inconsistencies or conflicts, but in the event of any conflict, requirements for greater quantity and/or more expensive work shall govern.
- 6.2 In case of conflicts between the provisions of this Contract, any ancillary documents executed contemporaneously herewith or prior hereto, or any other of the Contract Documents, the provisions of this Contract (including all Exhibits and Attachments) shall prevail.
- 6.3 Anything shown on the Plans and not mentioned in the Specifications or mentioned in the Specifications and not shown on the Plans shall have the same effect as if shown or mentioned respectively in both. In case of disagreement between the written and graphic portions of the Project Manual, the written portion shall govern.
- 6.4 The organization of the Specifications into divisions and sections and the arrangement of Plans shall not control the Construction Manager in dividing the Work among subcontractors or in establishing the extent of the Work to be performed by any trade. The organization of the Specifications and the arrangement of the Plans are for the convenience of the Construction Manager and are not intended to relieve the Construction Manager from its obligation to conduct a complete study of the Plans, Specifications and Addenda for the purpose of directing the various Subcontractors and suppliers as to their respective responsibilities.

ARTICLE 7 - CONSTRUCTION ADMINISTRATOR'S AUTHORITY

- 7.1 The Construction Administrator will provide overall technical and management services to assist Owner in maintaining schedules, establishing budgets, controlling costs, achieving quality and minimizing operational disruptions.
- 7.2 If at any time the Construction Administrator observes or becomes aware of any fault or defect in the Project or of any nonconformance with the Contract Documents, Construction Administrator will promptly notify the Owner Representative and the Construction Manager, and will direct that all reasonable steps be taken to correct such fault, defect or nonconformance. The Construction Administrator shall have the authority to reject Work that does not in its opinion, conform to the Contract Documents.

- 7.3 Construction Administrator shall monitor the work of the Construction Manager and shall coordinate all phases of its work to facilitate completion of the Work in accordance with the established time period and estimate of construction cost.
- 7.4 Construction Administrator shall have no control over construction means, method, techniques, sequences and procedures employed by the Construction Manager in the performance of the Work.
- 7.5 Construction Administrator shall determine when the date of Substantial Completion has occurred.

ARTICLE 8 - TIME FOR PERFORMANCE OF CONSTRUCTION OF WORK

8.1 Contract Time

- 8.1.1 The Construction Manager shall be instructed to commence construction of the Work by written instruction in the form of a Notice to Proceed issued by the Owner Representative. The Notice to Proceed will not be issued until after execution of the Guaranteed Maximum Price Amendment by both parties, and the Notice to Proceed shall indicate what portions (which may be all portions) of the Work are included. The receipt of all initially-required permits by the Construction Manager and the Construction Manager's unimpeded access to and use of the Project Site (subject to FAA, TSA, and Airport security regulations) are condition precedents to the issuance of a Notice to Proceed.
- 8.1.2 Time is of the essence throughout this Contract. The parties acknowledge that the construction may, at City's direction, proceed under partial permits. The Construction Manager shall provide Construction Administrator with a schedule indicating specific dates by which completed drawings and permits must be received by the Construction Manager to ensure the uninterrupted progress of the Work in order to complete the Work as scheduled.
- 8.1.3 The Construction Manager shall achieve Substantial Completion no later than the Substantial Completion date set forth in the Guaranteed Maximum Price Amendment(s) and shall achieve Final Completion no later than sixty (60) days after Substantial Completion.
- 8.1.4 If the Construction Manager fails to achieve Substantial Completion of the Work within the time specified in Section 8.1.3 above and the GMP Amendment, plus approved time extensions, the Construction Manager shall pay to City, for each Day after the time specified in the Guaranteed Maximum Price Amendment, plus any approved extensions, *per diem* liquidated damages in the amount of Six Thousand Dollars (\$6,000.00) for each Day thereafter until Substantial Completion is achieved. Notwithstanding the foregoing, no liquidated damages under this paragraph shall be payable if Substantial Completion is achieved within fifteen (15) calendar days after the time specified in Section 8.1.3 above and the GMP Amendment, plus approved time extensions.

After Substantial Completion, should the Construction Manager fail to achieve Final Completion within the time specified in Section 8.1.3 above, plus approved time extensions thereof, for Final Completion and readiness for final payment, the Construction Manager shall pay to City, *per diem* liquidated damages in the amount of Three Thousand Dollars (\$3,000.00) for each Day thereafter until Final Completion is achieved.

These amounts are not penalties but are liquidated damages to City for its inability to obtain full beneficial use of the Work. Liquidated damages are hereby fixed and agreed upon between the parties as Owner's sole remedy for the delays in completion, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by City as a consequence of such delay, and both parties desiring to obviate any questions or disputes concerning the amount of said damages and the cost and effect of the failure of the Construction Manager to complete the Contract on time.

Notwithstanding the foregoing, the total liquidated damages payable by the Construction Manager under this Section 8.1.4 shall not exceed the amount of the Construction Manager's Fee.

- 8.1.5 Subject to the dispute resolution provisions of this Contract, Owner is authorized to deduct liquidated damages from monies due to the Construction Manager for the Work under this Contract, or as much thereof as City may, at its own option, deem just and reasonable.
- 8.1.6 The Construction Schedule prepared and maintained by Construction Manager shall include, and shall be deemed to include, Saturday, Sundays, Holidays, and monthly inclement weather days normally encountered at the site for the calendar months included in the Construction Schedule as set forth in Exhibit "G" attached hereto ("Monthly Normal Inclement Weather Days"). Construction Manager shall be charged for each Day during the term of construction including Saturday, Sundays, Holidays, and Normal Inclement Weather Days. If in any calendar month Construction Manager is unable to work at least fifty percent (50%) of the Normal Work Day on pre-determined Controlling Work Items due to inclement weather for more Days in such calendar month that the Monthly Normal Inclement Weather Days for such calendar month, as set forth in Exhibit "G" hereto, the Construction Manager may not be charged a Day for each such Day in excess of such Monthly Normal Inclement Weather Days for such calendar month, and the Contract Time shall be extended one Day for each such Day in excess of such Monthly Normal Inclement Weather Days for such calendar month as Construction Manager's sole remedy for loss of time during such calendar month due to weather, provided that Construction Manager strictly complies with the provisions of Section 8.3. Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for change in Contract Time pursuant to Section 8.3. In any event, time extensions for a delay caused by inclement weather shall be granted only to the extent that such inclement weather delay adversely affects one or more Critical Activities. Nothing in this Section shall be deemed to contradict or affect the application of Section 8.1.7 (no damages for delay).
- 8.1.7 Except as otherwise provided in Section 9.6.1, the Construction Manager's sole remedy for any inclement weather delay or other delay shall be an extension of the Contract

Time, unless such other delay shall have been caused by acts constituting fraud, bad faith or active interference by the Owner with Contractor's performance of the Work and where and to the extent that such acts continue after Contractor's notice to Owner of such interference. Owner's exercise of any of its rights as it relates to changes in work regardless of the extent or number of such changes, or Owner's exercise of any of its remedies of suspension of the work, or requirement of correction or re-execution of any defective work, shall not under any circumstances be construed as active interference with Contractor's performance of the work. To exercise Contractor's right to extension of time due to Owner's active interference, Contractor shall, within three calendar days, or the following business day if the third day falls on a Saturday, Sunday, or Holiday ("notification period"), notify Owner in writing of Owner's active interference. If Contractor fails to notify Owner of Owner's active interference within the notification period, then Contractor waives any rights under this Section to claim Owner's active interference from the end of the notification period until the Owner receives written notification of active interference from Contractor.

- 8.2 When the Construction Manager considers that the Work has reached Substantial Completion, the Construction Manager shall so notify City and Construction Administrator in writing. Construction Administrator shall then promptly inspect the Work. When Construction Administrator, on the basis of such an inspection, determines that the Work has achieved Substantial Completion, Construction Administrator will then prepare a Certificate of Substantial Completion in the customary form acceptable to the parties which shall establish the Date of Substantial Completion; shall state the responsibilities of City and the Construction Manager for security, maintenance, utilities, damage to the Work, and insurance; and shall list all work yet to be completed ("Punch List") to satisfy the requirements of the Contract Documents for Final Completion; and shall establish time for Final Completion of all such final work. The failure to include any items of corrective work on such list does not alter the responsibility of the Construction Manager to complete all of the Work in accordance with the Contract Documents. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated segment thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to City through the Owner Representative, after execution by the Construction Manager and Construction Administrator, indicating their written acceptance of the responsibilities assigned to them in such Certificate.

8.3 Notification of Change of Contract Time or Contract Price

- 8.3.1 Any claim for a change in the Contract Time or Contract Price shall be made by written notice delivered by the Construction Manager to the Construction Administrator within fifteen (15) Days of the commencement of the event giving rise to the claim and stating the general nature of the claim. Notice of the specific nature and elements of the claim shall be delivered within twenty (20) Days after the date of such written notice. Thereafter, within twenty (20) Days of the termination of the event giving rise to the claim, notice of the extent of the claim with supporting data shall be delivered to Construction Administrator, unless Construction Administrator allows in writing an additional period of time to ascertain more accurate data in support of the claim, and

shall be accompanied by the Construction Manager's written sworn certification that the adjustment claimed is the entire adjustment in Contract Time and Contract Price to which the Construction Manager is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time or Contract Price shall be determined by Construction Administrator in accordance with Article 30 hereof, if Construction Administrator and the Construction Manager cannot otherwise agree. NO CLAIM FOR AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE WILL BE VALID IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION. Nothing in this Section shall be deemed to contradict or affect the application of Section 8.1.7 (no damages for delay). Notwithstanding the foregoing, any claim for a change in the Contract Time or the Contract Price with respect to differing site conditions shall be governed by Section 5.2.6.

- 8.4 The Construction Manager has been informed that Tenant desires to have access to the hangar during the ninety (90) day period prior to the anticipated date of Substantial Completion for the purpose of installing and testing Tenant-provided inventory, improvements, systems, trade fixtures, and equipment, including but not limited to computer network systems, public address system, and IT communications systems. The Construction Manager agrees to cooperate and coordinate in good faith with Tenant to permit Tenant such access if, as, and to the extent that construction activities permit and subject to such reasonable conditions as the Construction Manager may require, which may include, without limitation, Tenant indemnification of the Construction Manager, its subcontractors and suppliers, and their respective employees, guests, and invitees, and Tenant-provided liability insurance for the benefit of the Construction Manager, its subcontractors and suppliers, and their respective employees, guests, and invitees.

ARTICLE 9 - CHANGES IN THE WORK OR TERMS OF CONTRACT DOCUMENTS

- 9.1 Without invalidating the Contract and without notice to Surety or any other surety, City reserves and shall have the right, from time to time, to make such increases, decreases or other changes in the character or quantity of the Work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional work within the scope of this Project must be accomplished by means of appropriate Field Orders, Change Directives or Change Orders; any sums moved between Contract Price Elements included within the Contract Price must be accomplished by an appropriate Contract Price Element Adjustment Memorandum. Without limiting the generality of the foregoing, Owner may at any time and from time to time issue Change Directives and/or Owner and Construction Manager may at any time and from time to time enter into Change Orders and/or Amendments to add the construction of all or any part of Element 2 to this Contract subject to such terms and conditions as the parties shall mutually agree.
- 9.2 Any changes to the terms of the Contract Documents must be contained in a written document executed by the parties hereto prior to the initiation of any work reflecting such

change. This section shall not prohibit the issuance of Change Directives executed only by City as hereinafter provided. The Owner Representative shall have authority to authorize and execute any Change Order on behalf of Owner if the net increase in the GMP resulting from such Change Order is not greater than \$25,000.00. Otherwise, the Change Order must be executed by the Mayor or City Administrator of the City of Pensacola.

- 9.3 The Construction Administrator may direct the Construction Manager to expedite the Work by whatever means the Construction Manager may use, including, without limitation, increasing staffing or working overtime, to bring the Work back within the Construction Schedule. If the expediting of Work is required due to reasons within the control or responsibility of the Construction Manager, then the additional costs incurred shall be chargeable to the Cost of the Work as part of the GMP. If the expediting of Work is required due to reasons outside the control or responsibility of the Construction Manager, then the additional costs incurred shall be the subject of an appropriate adjustment issued pursuant to Section 9.4 below.

9.4 Changes to the Work

- 9.4.1 Changes in the quantity or character of the Work within the scope of the Project which are not properly the subject of Field Orders, including all changes resulting in changes in the Contract Price or the Contract Time, shall be authorized only by Change Orders or Change Directives. Without limiting the generality of the foregoing, Owner may at any time and from time to time issue Change Directives and/or Owner and Construction Manager may at any time and from time to time enter into Change Orders and/or Amendments to add the construction of all or any part of Element 2 to this Contract subject to such terms and conditions as the parties shall mutually agree.
- 9.4.2 The Construction Administrator, as authorized by the Owner Representative, may initiate a change order request ("Change Order Request"), setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, the Construction Manager shall review the change order request with the Construction Administrator prior to furnishing to the Construction Administrator a statement setting forth in detail, with a suitable detailed breakdown including a breakdown of labor and materials, the Construction Manager's estimate of the changes in the Estimated Construction Manager's Direct Construction Cost (as set forth as an exhibit, in the format of Exhibit "B" hereto, to the GMP Amendment) and changes to any other Contract Price Elements attributable to the changes set forth in such Change Order Request and proposed adjustments, if any, to the Contract Time resulting from such Change Order Request. If the Owner Representative accepts such the Construction Manager's Estimate, a Change Order shall be executed by an authorized representative of Owner and delivered by the Construction Administrator to the Construction Manager for execution. Agreement on any Change Order shall constitute a final settlement on all items affected therein, including without limitation any adjustment in the Guaranteed Maximum Price or the Contract Time, subject to performance thereof and payment therefore pursuant to the terms of this Contract and such Change Order.

9.4.3 The Construction Manager's fee on such changes shall be determined as follows:

(a) A mutually acceptable fixed fee, or if none can be agreed upon,

(b) The Construction Manager's Fee (expressed as a percentage as set forth in the GMP Amendment) multiplied by the net change to the Cost of the Work resulting from the Change Order. Any subcontractor's percentage markup for overhead and profit on change orders shall be reasonable, but in no event shall the aggregate of the subcontractor's overhead and profit markups exceed fifteen percent (15%). In the event subcontractor is affiliated with the Construction Manager by common ownership or management, or is effectively controlled by the Construction Manager, no Construction Manager's Fee will be allowed on the subcontractor's costs. In the event there is more than one level of subcontractor, such as second and third tier subcontractors, the sum of all of the subcontractors' percentage markups for overhead and profit shall not in the aggregate exceed thirty percent (30%).

9.4.4 All changes to construction contracts must be approved in advance in writing.

9.4.5 The Construction Manager shall not start work on any alteration requiring an increase in the Contract Price or the Contract Time until a Change Order setting forth the adjustments is approved in writing by Owner. Upon receipt of a Change Order, the Construction Manager shall promptly proceed with the work set forth within the document.

9.4.6 In the event a satisfactory adjustment cannot be negotiated for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, City reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work, or submit the matter in dispute to Construction Administrator as set forth in Article 30 hereof. During the pendency of the dispute, and upon receipt of Change Directive from the Owner Representative, the Construction Manager shall promptly proceed with the change in the Work involved and advise the Construction Administrator and Owner Representative in writing within seven (7) calendar days of the Construction Manager's agreement or disagreement with the adjustment, if any, provided in the Change Directive for the Contract Price or Contract Time.

9.4.7 On approval of any Contract change increasing the Contract Price, the Construction Manager shall ensure that the Performance Bond and the Payment Bond are increased so that each reflects the total Contract Price as increased.

9.5 The Construction Administrator shall have the right to approve and issue Field Orders setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in Work execution, providing the Field Order involves no change in the Contract Price or Contract Time.

9.6 Excusable Delay: Compensable and Non Compensable

- 9.6.1 Excusable Delay is delay which extends the Contract Time, is not otherwise contemplated by the Contract (e.g., Section 8.1.6 Monthly Inclement Weather Days), and is caused by circumstances beyond the control of the Construction Manager or its subcontractors, material persons, suppliers, or vendors. Excusable Delay may include, without limitation (a) acts of God; (b) flood, fire, hurricane, earthquake, adverse weather conditions, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Contract; (f) action by any governmental authority; and (g) labor disputes or unavoidable casualties. If Construction Manager is unable to work at least fifty percent (50%) of the Normal Work Day on pre-determined Controlling Work Items due to Excusable Delay, the Construction Manager may not be charged a Day for each such Day, and the Contract Time shall be extended one Day for each such Day as Construction Manager's sole remedy for loss of time during such calendar month due to weather, provided that Construction Manager strictly complies with the provisions of Sections 8.1.7 and 8.3. However, notwithstanding the foregoing, if the Contract Time is so extended for more than thirty (30) Days, Construction Manager shall be entitled to a Change Order increasing the General Conditions Costs and, correspondingly, the Contract Sum by \$6,665.00 per Day for each Day of such extension in excess of thirty (30) Days, as liquidated damages incurred by the Construction Contractor by reason of such Excusable Delay.

The Construction Manager shall document its claim for any time extensions and delay as provided in Section 8.3 hereof.

Failure of the Construction Manager to comply with Section 8.3 as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

- 9.6.2 Excusable Delay may be compensable or non-compensable. Except as otherwise expressly provided in Section 9.6.1, Excusable Delay is compensable ("Compensable Excusable Delay") only if the Excusable Delay is solely caused by the fraud, bad faith or active interference by Owner; provided that Construction Manager strictly complies with the provisions of Sections 8.1.7 and 8.3. In no event shall the Construction Manager be compensated for interim delays which do not extend the Contract Time.

The Construction Manager shall be entitled to direct and indirect costs for Compensable Excusable Delay. Direct cost recoverable by the Construction Manager shall be limited to the actual additional costs allowed pursuant to Section 10.3.

City and the Construction Manager recognize and agree that the amount of the Construction Manager's precise actual indirect costs for Compensable Excusable Delay in the performance and completion of the Work is impossible to determine as of the date of execution of the Contract Documents, and that proof of the precise amount will be difficult. Therefore, indirect costs recoverable by the Construction Manager shall be liquidated on a daily basis for each day the Contract Time is delayed due to a

Compensable Excusable Delay. These liquidated indirect costs shall be paid to compensate the Construction Manager for all indirect costs caused by a Compensable Excusable Delay and shall include, but not be limited to, all profit on indirect costs, job site and home office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity and all other indirect costs recoverable. City shall pay the Construction Manager liquidated damages in the per diem amount of \$6,665.00 for each day the Contract Time for the Work is delayed due to a Compensable Excusable Delay.

The Construction Manager shall be entitled to recover liquidated damages, if at all, under either Section 9.6.1 or Section 9.6.2, but not under both such sections, for the same delay time period.

When Excusable Delay is (i) caused by circumstances beyond the control of the Construction Manager, its subcontractors, material persons, suppliers and vendors, and is also caused by circumstances not meeting the criteria of Excusable Compensable Delay, or (ii) is caused jointly or concurrently by the Construction Manager or its subcontractors, material persons, suppliers or vendors and by Owner or Construction Administrator, then the Construction Manager shall be entitled only to a time extension and no further compensation for the delay.

ARTICLE 10 - PAYMENTS AND COST OF THE WORK

- 10.1 In full consideration of the full and complete performance of the Work and all other obligations of the Construction Manager hereunder, Owner shall pay to the Construction Manager a sum of money, not to exceed the Guaranteed Maximum Price as adjusted by approved Change Orders, equal to the Contract Price which is defined to be the total of: (i) the Cost of the Work, (ii) the General Conditions Costs set forth in the GMP Amendment, (iii) the Construction Manager's design phase fee set forth in Section 4.1, (iv) so much of the approved amount of the Construction Manager's Contingency account as may have been expended, (v) so much of the approved amount of the Owner's Contingency account as may have been expended by Construction Manager for the Work, (vi) Taxes and (vii) the Construction Manager's Fee. The Contract Price shall not exceed the Guaranteed Maximum Price, adjusted to take into account any approved Change Orders, and shall mean those costs necessarily incurred and paid by the Construction Manager in connection with the performance of all the Work.
- 10.2 Intentionally left blank.
- 10.3 The term "Cost of the Work" shall mean the sum of all direct costs necessarily incurred and paid by the Construction Manager in the performance of the Work. Such costs shall be at rates not higher than those customarily paid in the locality of the Project except with the prior written consent of City. The Cost of the Work shall include only those items set forth in this Section 10.3 and shall not include any items listed in Section 10.4. Payment for any work covered by the Contract shall be determined in one of the following ways:

10.3.1 Subcontractor Costs

(1) Where the Work is covered by unit prices contained in the Contract Documents or an applicable subcontract, by application of unit prices to the quantities of items involved. If the quantity of any item of subcontractor work that is covered by a unit price is increased or decreased by more than twenty percent (20%) from the quantity of such work indicated in the Contract Documents, an appropriate Change Order may be issued to adjust the unit price, if warranted.

(2) By mutual acceptance of a lump sum which subcontractor, the Construction Manager and Construction Administrator acknowledge contains a component for overhead and profit, which shall be subject to the limitation of subcontractor fees set forth in Section 9.4.3. Whenever a change in subcontractor work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, the Construction Manager shall submit an initial cost estimate obtained from the subcontractor and acceptable to Construction Administrator. The breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost. Whenever a change involves more than one subcontractor and the change is an increase in the GMP, the overhead and profit percentage of each subcontractor and the Construction Manager, if applicable, shall be itemized separately.

(3) If a subcontract provides that the subcontractor is to be paid on the basis of cost of the work plus a fee, the subcontractor's cost of the work shall be determined in the same manner as the Construction Manager's cost of the work, subject to the limitation on subcontractor's fees set forth in Section 9.4.3.

(4) If changes to subcontracted work affect the GMP, such changes shall be accomplished in accordance with Section 9.4. The amount of decrease in the GMP for any change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and decreases are involved in any one change, the combined effect shall be figured on the basis of the net change in the GMP, if any.

10.3.2 Payroll costs for employees in the direct employ of the Construction Manager in the performance of the work who are stationed or principally located in the field or field office as follows: salaries plus labor burden as set forth in the schedule of job classifications agreed upon by City and the Construction Manager and included in each GMP Proposal and GMP Amendment (Management Services) Labor burden shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation, holiday pay and any other fringe or utilized benefits.

10.3.3 Materials and Equipment: Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith, adjusted in accordance with Article 12, pertaining to "Discounts, Rebates and Refunds;" rentals of all construction equipment and machinery and the parts thereof whether rented from the Construction Manager or others in accordance with rental agreements and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the

use thereof is no longer necessary for the work. If the total rent paid for any item of equipment rented from a vendor or from the Construction Manager's stock will exceed seventy (70%) percent of its fair market value, with Construction Administrator's approval the item shall be purchased, a bill of sale issued by the Construction Manager, and the item shall become the property of Owner. For equipment owned by the Construction Manager which is utilized in construction of the Work, cost shall be calculated on the actual cost of operation, proration of maintenance and actual depreciation in value.

10.3.4 Owner reserves the right to purchase and/or supply materials, tools or items of equipment to the Construction Manager which Owner is able to provide at a lower cost than that available to the Construction Manager or has already purchased on a prior project or desires to direct purchase so as not to pay sales tax. In the event of such purchase or supply by Owner, the actual purchase price shall be considered as an element of the Direct Construction Cost.

10.3.4.1 City certifies and represents that it is properly certified as an entity exempt from the payment of sales and use taxes in the State of Florida. Prior to City's purchase of any materials pursuant to the provisions of Section 10.3.4, City shall provide Construction Manager, upon request, with documentation confirming such exemption, including City's Certificate of Entitlement. City acknowledges that Construction Manager may rely upon this certification and representation by City.

10.3.4.2 City may purchase materials to be incorporated into the Work directly pursuant to the terms and conditions of this Section 10.3.4.

10.3.4.3 In the event City elects to purchase materials directly, City and Construction Manager shall follow the following procedures:

(a) Prior to City's issuance of the Notice to Proceed, Construction Manager shall provide to City a list of the materials and equipment potentially available for direct purchase by City. Such list shall include (i) an estimate of the value of each such item, (ii) an estimate of the sales/use tax savings on each such item, and (iii) the deadline for ordering each such item, such that the materials can be timely ordered, fabricated and delivered so as not to delay the prosecution of the Work. Construction Manager shall not order any such items until not less than thirty (30) days after such list has been provided to City. City shall notify Construction Manager in writing of the materials and equipment to be used or incorporated into the Work that City has determined that it will purchase directly. This notice must be provided to Construction Manager before the Construction Manager has ordered the materials, and such materials shall be ordered by City on or before the ordering deadline specified in such list.

(b) Construction Manager shall prepare, on City's form, a purchase order directed to the vendor of the materials sufficient to describe and order the materials which City has elected to purchase directly, and shall provide such purchase order to City. Such purchase order shall provide that the purchased item shall be FOB job site. Construction Manager's submission of a completed purchase order form is a representation by Construction Manager to City that the materials described therein comply with the

Contract Documents. City may not prepare or issue a purchase order not prepared by Construction Manager.

(c) City shall execute the purchase order and shall issue the purchase order directly to the vendor supplying the materials, including, as an attachment to such purchase order, a copy of the City's Certificate of Exemption in accordance with the provisions of Florida Administrative Code, Paragraph 12A-1.094, Public Works Contracts.

(d) The vendor shall then issue its invoice directly to City, and City shall pay the invoice according to its terms directly to vendor from public funds.

(e) City shall provide Construction Manager with a copy of each invoice and proof of payment.

(f) Upon receipt of each invoice and proof of payment, Construction Manager shall prepare, not more frequently than monthly, a Change Order reducing the Guaranteed Maximum Price by the amount paid by City for the directly purchased materials plus the amount of sales or use tax which Construction Manager would have paid on such materials had Construction Manager purchased the materials itself. The Change Order shall then be executed as provided in the Contract Documents. However, the Construction Manager's Fee and the Construction Manager's Contingency shall be calculated as if the Guaranteed Maximum Price was not reduced by the amount paid by City for directly purchased materials; provided that the amount of sales or use tax savings resulting from direct purchases by City shall be excluded from the Cost of the Work for the purpose of calculating the Construction Manager's Fee and the Construction Manager's Contingency. For the avoidance of doubt, the premiums for bonds and insurance included in the General Conditions Cost shall not be affected by reason of any amount paid by City for directly purchased materials.

(g) City shall take title to the materials at the time of delivery by the vendor to the job site, and all warranties with respect to such materials shall run directly from the vendor to City; however, Construction Manager shall be deemed a third-party beneficiary of such warranties. City's direct purchase of materials shall not, however, alter any of Construction Manager's obligations under the Contract Documents, including but not limited to Construction Manager's warranty obligations under the Contract Documents.

(h) As provided above, direct purchases by City shall be FOB the jobsite, so the vendor assumes the risk of loss or damage to the materials from the date of submission of the order until the materials are delivered to the job site and properly unloaded and stored at the job site, upon which City shall assume the risk of loss or damage to the materials.

10.3.4.4 The provisions of this Section 10.3.4 do not relieve Construction Manager of its obligations to install any directly purchased materials in compliance with the Contract Documents.

10.3.4.5 If City fails to order any direct-purchase materials on or before the date specified by the Construction Manager pursuant to Section 10.3.4.1 and such failure delays the critical path of the Work, Construction Manager shall be entitled an equitable adjustment of the Contract time, unless Construction Manager is at fault for such delay.

10.3.4.6 City shall indemnify and hold the Construction Manager harmless of and from any liability for sales and use taxes, including any penalties and interest, for direct purchases by City should it be determined that the purchases, in fact, are subject to the payment of sales and use taxes or that the methodology described herein is not sufficient to exempt such direct-purchase materials from sales and use taxes.

10.3.5 Miscellaneous costs:

- (1) The receipted cost of telephone, telegrams, postage, photographs, blueprints, office supplies, first aid supplies and related miscellaneous costs reasonably incurred in direct support of the Work at the Project Location.
- (2) Premiums (net) on bonds and insurance, not included in General Conditions Costs, that the Construction Manager is obligated to secure and maintain under the terms of the Contract Documents, subject to the written approval of Owner. Premiums paid as part of the Construction Manager's Cost shall be net of trade discounts, volume discounts, dividends and other adjustments. All insurance and bonds shall be provided by companies acceptable to Owner. Self-insurance by the Construction Manager or insurance through any affiliates of the Construction Manager shall not be permitted without Owner's prior written approval; provided that Owner hereby approves Construction Manager's use of Lakeview Risk Partners, a related party, as Construction Manager's agent (but not surety or underwriter) in bonding and insurance transactions. Premiums for subcontractor bonds that are not required under the terms of the Contract Documents shall be considered part of the Construction Manager's Overhead, not Cost of the Work. Notwithstanding the foregoing, the Construction Manager may purchase from AXA XL a Subcontractor Default Insurance ("SDI") policy providing comprehensive default coverage on enrolled subcontractors and specified vendors providing portions of the Work where the subcontractor or supplier has a direct contractual relationship with the Construction Manager. The premium for such SDI policy shall be included in the Cost of the Work up to but not exceeding an amount equal to one and three-tenths percent (1.3%) of the aggregate value of all subcontracts and specified purchase orders, including Change Orders, covered by such SDI policy; provided that any portion of the premium in excess of such amount shall be considered part of the Construction Manager's Overhead, not Cost of the Work; and provided further that the value of any portion of the Work performed by the Construction Manager or a subcontractor affiliated with the Construction Manager by common ownership or management or effectively controlled by the Construction Manager shall not be included in the premium calculation. The Construction Manager's procurement of such SDI policy shall not alter, limit, or restrict in any way the Construction Manager's obligations and liabilities under the Contract Documents.

- (3) The cost of obtaining and using any utility services required for the Work that are not paid directly by City, including fuel and sanitary services at the Project site.
- (4) The cost of removal of debris from the site. The Project site, lay-down locations, and staging sites will be kept clear of all debris on a daily basis. All subcontracts shall require subcontractors to promptly (no less than weekly) remove all debris created by their activities, and the Construction Manager shall exercise its best efforts to enforce such requirements or to effect the removal of the debris of the subcontractors who fail in this regard. Provided, however, the Construction Manager shall not be required to remove debris created by Owner's separate contractors or operators except pursuant to Change Order procedures set forth herein.
- (5) The cost and expenses, actually sustained by the Construction Manager in connection with the Work, of protecting and repairing adjoining property, if required, except to the extent that any such cost or expense is:
 - (a) the responsibility of the Construction Manager under Article 28, reimbursable by insurance or otherwise;
 - (b) due to the failure of the Construction Manager to comply with the requirements of the Contract Documents with respect to insurance; or,
 - (c) due to the failure of any officer of the Construction Manager or of any of its representatives having supervision or direction of the Work to exercise good faith or the standard of care normally exercised in the conduct of the business of a general contractor experienced in the performance of work of the magnitude, complexity and type encompassed by the Contract Documents, in any of which events any such expenses shall not be included in the Construction Manager's costs.
- (6) Taxes with respect to services performed or material furnished for the Work, it being understood that none of the foregoing includes Taxes.
- (7) All reasonable costs and expenditures necessary for the operation of the project job site office, including cost of field computer equipment and software in accordance with Exhibit "C".
- (8) If not included in General Conditions Costs or in a lump-sum Construction Manager self-performance or subcontract package, necessary transportation, travel, and subsistence expenses incurred by the specified employees of Construction Manager, excluding travel time, incurred in discharge of duties connected with the Work, except for local travel to and from the site of the Work, subject to the following limitations: (1) each GMP Proposal and GMP Amendment shall include a mutually agreeable allowance for travel expenses and shall name the employees who are subject to such travel allowance; (2) any travel expenses incurred by the Construction Manager in excess of the travel allowance shall be the sole obligation of the Construction Manager and, at the Construction Manager's election, may be paid from the Construction Manager's Contingency

to the extent of available funds; (2) fares for air transportation shall not exceed standard coach rates; (3) reimbursement for ground travel (automobile rental, taxi, parking, etc.) shall not exceed \$50.00 per day; and (4) reimbursement for lodging expenses while traveling shall not exceed the corporate rate at major business hotels in the area and the per diem for meal and miscellaneous business expenses shall not exceed \$30.00. The Construction Manager shall provide detailed receipts for all reimbursable charges. The parties understand and agree that teleconferencing, video conferencing, and virtual meeting technologies shall be used to the maximum extent feasible in order to minimize the need for travel by the Construction Manager's employees.

- (9) Cost, including transportation and maintenance, of all materials, supplies, office equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers which are consumed in the performance of the work, and cost less market value of such items used but not consumed which remain the property of the Construction Manager.
- (10) Deposits lost for causes other than the Construction Manager's negligence; royalty payments and fees for permits and licenses.
- (11) Cost of premiums for additional bonds and insurance, not included in General Conditions Costs, and required because of changes in the Work.
- (12) Cost of shuttling employees to and from the job site to the designated parking and/or staging area, if required.
- (13) Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, surveyors, lawyers and accountants, employed for services specifically related to the Work.
- (14) Any other expenses or charges incurred, with the prior written approval of the Construction Administrator, in the performance of the Work.

10.4 Overhead. "Overhead" is defined as any and all other costs, not referenced in Section 10.3, of the Construction Manager and its operation, including but not limited to the overhead items shown on the matrix attached hereto as Exhibit "E". The Direct Cost of the Work shall not include Overhead. The Construction Manager agrees to furnish and perform, as a part of the Contractor's Fee and without reimbursement, said Overhead items which include, but are not limited to, the following materials and services:

10.4.1 Payroll costs and other compensation of the Construction Manager's officers, executives, principals (of partnership and sole proprietorship), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by the Construction Manager that are shown under the "Fee" column on the matrix attached hereto as Exhibit "E", all of which are to be considered administrative costs covered by the Construction Manager's Fee.

- 10.4.2 Other than those expenses authorized on Exhibit "C", expenses of the Construction Manager's principal and branch offices.
- 10.4.3 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work and charges against the Construction Manager for delinquent payments.
- 10.4.4 Other overhead, general expense costs or charges of any kind and the cost of any item not specifically and expressly included in Section 10.3.
- 10.4.5 Costs in excess of the Guaranteed Maximum Price.
- 10.4.6 Entertainment and meal expenses and charges of a personal nature.
- 10.4.7 Bonuses, profit-sharing or other special labor charges not included in Section 10.3.2, above.
- 10.4.8 Any outside legal fees incurred without prior written approval from Owner Attorney's Office.

10.5 Progress Payments

- 10.5.1 The Owner shall make payment to the Construction Manager in accordance with its standard billing and payment procedures and applicable Florida Statutes. Invoices must be received and approved by City by the 20th of month in order to be paid in City check cycle. Ordinarily Owner issues checks for payment of invoices on the 10th of each month. A complete and accurate billing from the Construction Manager must have been received and approved by the Construction Administrator and forwarded to the Office of the Airport Director by the 20th day of the month for consideration of payment on the 10th of the following month. Items received after the 20th day of the month may be processed in the following payment cycle.
- 10.5.2 Ten percent (10%) of all monies earned by the Construction Manager shall be retained by City until Final Completion and acceptance by City of the Work in accordance with Section 10.8 hereof. After fifty percent (50%) of the Work has been completed, the Owner Representative may reduce the retainage to five percent (5%) of all monies previously earned and all monies earned thereafter, and after ninety percent (90%) of the Work has been completed, the Owner Representative may reduce the retainage to two and one-half percent (2-1/2%) of all monies previously earned and all monies earned thereafter. Any reduction in retainage shall be in the sole discretion of the Owner Representative, shall be recommended by Construction Administrator, and the Construction Manager shall have no entitlement to a reduction. Without limiting the generality of the foregoing, any reduction in retainage shall be subject to (1) the written consents of the various grant funders, if required by the grant agreements, (2) the written consent of the Surety, and (3) reasonable evidence that there exist no actual or potential claims against the Construction Manager or any of its subcontractors. Any interest earned on retainage shall accrue to the benefit of City.

10.5.3 City may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

10.5.3.1 Defective Construction Manager or subcontractor work not remedied.

10.5.3.2 Claims filed or upon reasonable evidence indicating probable filing of claims by other parties against the Construction Manager relating to the Project.

10.5.3.3 Failure of the Construction Manager to make payments properly to subcontractors or for material or labor.

10.5.3.4 Damage to another contractor not remedied.

10.5.3.5 Liquidated damages.

10.5.3.6 Prior to the date that payment of the withheld funds is otherwise due, Owner shall give Construction Manager written notice of the reason(s) that Owner is withholding funds, and the Construction Manager shall be entitled to receive the withheld funds if, as, and when such reason(s) are cured.

10.5.4 Fifteen (15) days prior to the first Request for Payment, the Construction Manager shall prepare an initial schedule of values for approval by the Construction Administrator allocating the entire estimated the Construction Manager's Direct Construction Cost among the various portions of the Work (the "Schedule of Values"). The Schedule of Values shall list the cost of materials, the cost of labor, the cost of equipment and the cost of subcontractor work separately for the portions of the Work delineated. Each monthly Request for Payment shall be for a sum equal to (i) that portion of the Construction Manager's Direct Construction Cost equal to the percentage of the Work completed; plus (ii) the amount of the Construction Manager's General Conditions actually expended; plus (iii) the amount of the Construction Manager's Fee equal to the percentage of the Work completed; provided, however, that prior to the date of the Final Request, and unless subject to reduction under Section 10.5.2, the aggregate of the Construction Manager's Fee payments shall not exceed ninety percent (90%) of the Construction Manager's Fee.

The Construction Manager's Direct Construction Cost shall be segregated and detailed in a manner satisfactory to the Construction Administrator, with sufficient supporting documentation and description of charges for the Construction Administrator to evaluate the charges. The Request for Payment shall indicate the percentage of completion of each portion of the Work, and the total Work, as of the end of the period covered by the Request for Payment. The Schedule of Values shall be used as one basis for reviewing the Request for Payment when such amounts are approved. The Request for Payment may include the cost of Materials not incorporated in the Work, but delivered and suitably stored at the Project location or at some other location approved, in writing in advance, by Owner. Materials stored off-site must be supported by a detailed invoice, bill of sale (transferring ownership to Owner) and insurance certificate naming Owner as additional insured equal to or exceeding the cost of the material so acquired.

- 10.6 If the Construction Administrator, in its good faith judgment, determines that the portion of the Guaranteed Maximum Price then remaining unpaid will not be sufficient to complete the Work in accordance with the Plans, Specifications and Addenda, no additional payments will be due to the Construction Manager hereunder unless and until the Construction Manager, at its sole cost, performs a sufficient portion of the Work so that such portion of the Guaranteed Maximum Price then remaining unpaid is determined by the Construction Administrator to be sufficient to so complete the Work.
- 10.7 The Construction Administrator and Owner shall review each such Request for Payment and may make such written exceptions as the Construction Administrator or Owner reasonably deem necessary or appropriate under the state of circumstances then existing. In no event shall Owner be required to make payment for items of the Construction Manager's Cost to which the Construction Administrator or Owner reasonably take exception.
- 10.8 Thirty (30) days after Final Completion of the Work and acceptance thereof by Owner or as soon thereafter as possible, the Construction Manager shall submit a final request for payment ("Final Request") which shall set forth all amounts due and remaining unpaid to the Construction Manager (including the unpaid portion of the Construction Manager's Fee). Upon approval of the final request for payment, Owner will issue a Final Certification of Payment in the customary form acceptable to the parties. The Construction Manager shall deliver to Owner the a Final Receipt in the form of Attachment 4 hereto.
- 10.9 Except for the Construction Manager's Fee, the Construction Manager shall use the sums advanced to it pursuant to this Article 10 solely for the purpose of performance of the Work and the construction, furnishing and equipping of the Work in accordance with the Plans, Specifications and Addenda and payment of bills incurred by the Construction Manager in performance of the Work.
- 10.10 Within 10 calendar days of receipt of payment from Owner, the Construction Manager shall pay all bills for labor and material performed and furnished by its subcontractors, suppliers and material providers, in connection with the construction, furnishing and equipping of the Work and the performance of the Work.
- 10.11 With the issuance of the GMP Plans and Specifications, Owner shall deliver to the Construction Manager a written list of those items, if any, to be purchased for use in the Work with funds furnished therefor by Owner (e.g., hoists, scaffolding, forms, tools, etc.) that Owner desires to retain or require to be sold upon completion of the Work (the "Retention Items"). Upon completion of the Work or the appropriate parts thereof, the Construction Manager shall, as directed by Owner in writing, either (i) deliver the Retained Items to Owner or (ii) either sell the Retained Items to a third party or purchase itself at the then fair market value thereof from Owner (said value determination being subject to Owner's written approval. The amounts received from such sale, if any, shall inure to Owner as a separate transaction outside the scope of this Contract.
- 10.12 In the event the Construction Manager submits charges as a Cost of the Work that are not specifically covered by this Contract, and to which the Construction Administrator objects, the Construction Manager must, as a condition precedent to pursuit of any other

method of dispute resolution, notify the Construction Administrator in writing, within twenty (20) days after the Construction Administrator objects to said charge, that the Construction Manager desires to resubmit the charge for resolution. The charge will then be resubmitted and an attempt to resolve the charge may be made by the Construction Manager, the Construction Administrator and Owner. Any charge not approved by the Construction Administrator within thirty (30) days of resubmission will be presumed to be disallowed, and the Construction Manager may thereafter pursue such remedies as may be available to it under this Contract.

ARTICLE 11 – DISCOUNTS, REBATES AND REFUNDS

- 11.1 All cash discounts obtained on payments made by the Construction Manager shall accrue to Owner unless the Construction Manager actually advanced its own funds, prior to receipt of funds from City, to make the payment giving rise to the discount. When the Construction Manager becomes aware that a cash discount may be available to City, the Construction Manager shall, prior to advancing its own funds, timely notify Construction Administrator of such opportunity so City can make the required payment to achieve the discount for Owner. The Construction Manager shall only advance its own funds if City declines to make the early payment. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to City, and the Construction Manager shall make provisions so that they shall be obtained.

ARTICLE 12 - SUBCONTRACTS AND PURCHASE ORDERS

- 12.1 Provisions for selection of subcontractors are defined under Section 2.8. Additionally, the following shall be required for all subcontract and purchase order agreements.
- 12.2 When the Construction Administrator has approved the award of any such subcontract or purchase order, the Construction Manager shall contract solely in its own name and behalf, and not in the name or behalf of Owner, with the specified subcontractor or supplier. The Construction Manager's subcontract form shall provide: that the subcontractor shall perform its portion of the Work in accordance with all applicable provisions of this Contract and the other Contract Documents; that subcontractor is bound to the Construction Manager to the same extent as the Construction Manager is bound to Owner; that subcontractor shall have the Construction Manager and City named as additional insureds on its commercial general liability insurance and provide an insurance certificate evidencing same; for termination of the subcontract by the Construction Manager in the same manner and method as provided in Article 23 of this Contract, or as otherwise provided in such subcontract, whichever is more protective of Owner's interest; and shall further provide that, in the event this Contract is terminated for any reason, that the subcontractor shall, at Owner's option, perform its subcontract for Owner, or for a contractor designated by Owner, without additional or increased cost, provided the subcontractor is paid in accordance with its subcontract. Nothing contained herein shall impose on Owner an obligation to assume any subcontract or make any payment to any subcontractor to perform pursuant to this Section 12.2, and nothing contained herein shall create any contractual relationship between Owner and any subcontractor.

The contract between the Construction Manager and subcontractor(s) shall provide that, in the event of this Contract termination by reason of a default under this Contract by the

Construction Manager, the subcontractor shall at Owner's option perform its contract for the Owner, or for a Construction Manager or Contractor designated by the Owner, without additional or increased cost. In that event, the Construction Manager shall sign and require subcontractor(s) to sign an assignment of rights under its contract to Owner or the Owner's designee in a form approved by the Owner. Nothing contained herein shall, however, create any obligation of Owner to assume any contract or make any payment to any the Construction Manager subcontractor unless the Owner chooses to assume such contract in accordance with the terms of this provision.

- 12.3 The Construction Administrator may, for good cause, designate as the selected subcontractor or supplier a bidder whose bid exceeds that of the bidder recommended by the Construction Manager, whose bid complies with the Plans, Specifications and Addenda (the amount by which the bid of the selected subcontractor exceeds the bid of the bidder recommended by the Construction Manager is referred to herein as the "preferred subcontractor cost differential"). If the Construction Administrator selects a bidder other than the bidder recommended by the Construction Manager then the Construction Administrator may designate that the preferred subcontractor cost differential shall be charged against the Construction Manager's Contingency or any surplus amounts within the Owner's Contingency, as mutually agreed by the parties, or the Guaranteed Maximum Price shall be increased by the amount of the preferred subcontractor cost differential.
- 12.4 All subcontracts shall, so far as practicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the Work.

ARTICLE 13 - INSPECTION OF WORK

- 13.1 As to means and methods, by executing the GMP Amendment, the Construction Manager represents that it has inspected the location or locations of the Work and has satisfied itself as to the condition thereof and that the Guaranteed Maximum Price is just and reasonable compensation for all Work, including all foreseen or reasonably foreseeable risks, hazards and difficulties in connection therewith.
- 13.1.1 Owner and the Construction Administrator at all times shall have access to the Work for inspection thereof, but shall not be obligated to conduct any such inspection. The Construction Manager shall provide proper and safe facilities for such access and inspection by Owner and Construction Administrator. If any of the Work is required to be inspected or approved by any public authority, the Construction Manager shall cause such inspection or approval to be performed at its sole expense.
- 13.1.2 No inspection performed or failed to be performed by Owner or Construction Administrator hereunder shall be a waiver of any of the Construction Manager's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.
- 13.1.3 The Construction Manager shall check all materials and labor entering into the Work and shall keep such full and detailed accounts as may be necessary to determine the Construction Manager's Cost.

- 13.2 City or its designee shall have the right to inspect and copy the books and records and accounts of the Construction Manager and all subcontractors including but not limited to books, records, correspondence, instructions, drawings, receipts, payment records, vouchers, and memoranda which relate in any way to the Project, and to any claim for additional compensation made by the Construction Manager, and to conduct an audit of the financial and accounting records of the Construction Manager which relate to the Project and to any claim for additional compensation made by the Construction Manager, subject to the limitations and exemptions of Chapter 119, Florida Statutes. The Construction Manager shall preserve and make available to City all financial records, supporting documents, statistical records and any other documents which relate to the Project and to any claim for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.). During the Project and for the appropriate records retention period, the Construction Manager shall provide City access to its books and records at the Construction Manager's usual place of business in Florida upon three Days' written notice (excluding Saturdays, Sundays, and Holidays). If any audit has been initiated and audit findings have not been resolved at the end of the retention period, the books, records and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.
- 13.2.1 The Construction Manager's records shall include, but not be limited to accounting records (hard copy, as well as computer readable data), written policies and procedures; subcontractor files (including proposals of successful and unsuccessful bidders and bid recaps), original estimates and estimating work sheets, correspondence, change order files (including, but not limited to, documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends and any other supporting evidence deemed necessary by Owner to substantiate charges related to this Contract (all of the foregoing hereinafter referred to as "records").
- 13.2.2 The Construction Manager shall require all subcontractors, insurance agents and suppliers to keep and maintain comparable records for the same time period and to permit Owner to review, inspect and audit such records. The Construction Manager shall include such requirements in all subcontracts and purchase orders issued.
- 13.3 If an audit inspection or other examination by Owner or Owner's representatives in accordance with this Article discloses overcharges (of any nature) by the Construction Manager to Owner in excess of three percent (3%) of the total billings, the cost of Owner's audit (whether performed by Owner or outside auditors) shall be reimbursed or paid to Owner by the Construction Manager. Any adjustments and/or payments which must be made as a result of any such audit, inspection or examination of the Construction Manager's invoices and/or records shall be made within a reasonable amount of time (not to exceed thirty (30) days) from presentation of Owner's findings to the Construction Manager.
- 13.4 If the Florida Public Records Act (Chapter 119, Florida Statutes), is determined by the City to be applicable to the Construction Manager's records, the Construction Manager shall comply with all requirements of that Act.

- 13.5 Because of the nature of the relationship between Owner and the Construction Manager, none of the Construction Manager's documents which in any way relate to the Project shall be deemed confidential or trade secrets between Owner and the Construction Manager. Without placing a limitation on the general nature of the foregoing, the Construction Manager's original budgeting and estimating documents and support documents relating to the Construction Manager's preconstruction services, the Construction Manager's general conditions, the Construction Manager's management services, the Construction Manager's fee and the preparation of any bids for self-performing work shall be available for disclosure under the Florida Public Records Act and to audit by Owner pursuant to this Section.
- 13.6 Construction Manager shall comply with the Florida Public Records Act to the full extent that it is applicable to Construction Manager and this Contract.
- 13.7 Construction Manager shall:
- i. Keep and maintain public records required by the City to perform the service.
 - ii. Upon request from the City's custodian of public records, provide the City 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.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if Construction Manager does not transfer the records to the City.
 - iv. Upon completion of the Contract, transfer, at no cost, to City all public records in possession of Construction Manager or keep and maintain public records required by the City to perform the service. If Construction Manager transfers all public records to City upon completion of the Contract, Construction Manager shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Construction Manager keeps and maintains public records upon completion of the Contract, Construction Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- 13.8 In the event that Construction Manager fails to comply with the provisions of sections 13.4, 13.5, 13.6 or 13.7 of this Contract, the Owner may, without prejudice to any other right or remedy and after having given Construction Manager five (5) days' written notice, during which period Construction Manager still fails to comply with said provisions of this Contract, terminate this Contract for cause.

IF CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY ATTORNEY, 222 WEST MAIN STREET, PENSACOLA, FLORIDA 32502; PUBLICRECORDS@CITYOFPENSACOLA.COM; (850) 435-1715.

ARTICLE 14 - WORK IN PROGRESS

- 14.1 The Construction Manager shall protect and prevent damage to all phases of the Work, and any existing facilities or improvements, including but not limited to the protection thereof from damage by the elements, theft or vandalism.
- 14.2 Owner reserves the right to perform other work on Airport property concurrently with the Project. The Construction Manager shall cooperate and coordinate its Work with the work of Owner or separate contractor employed by Owner. The Construction Manager shall afford Owner and any of Owner's separate contractors reasonable access to the Work for storage of material and equipment and for the prosecution of their work and shall connect and coordinate its Work with theirs as is reasonably inferable from the Contract Documents.

ARTICLE 15 - OCCUPATIONAL HEALTH AND SAFETY

- 15.1 The Construction Manager agrees that it shall not knowingly transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance, (as defined in Section 15.4), except in accordance with applicable Environmental Laws. Further, in performing the work, the Construction Manager shall not knowingly cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws.
- 15.2 In the event the Construction Manager encounters on the Project site any Hazardous Substance, or what the Construction Manager reasonably believes to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project Location, in violation of any applicable Environmental Laws, the Construction Manager shall immediately stop work in the area affected and report the condition to the Construction Administrator in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of the Construction Administrator if in fact a Hazardous Substance has been encountered and has not been rendered harmless.
- 15.3 The Owner Representative may direct the Construction Manager by utilization of the Owner's Contingency account funds to remediate and/or render harmless the Hazardous Substance in accordance with any applicable permits then in existence, but the Construction Manager shall not be required to remediate and/or render harmless the

Hazardous Substance absent such direction. If the Construction Manager is not so directed, the Construction Manager shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.

- 15.4 For purposes of this Contract, the term "Hazardous Substance" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound or mixture, which are defined in or included under or regulated by any local, state or federal law, rule, ordinance, bylaw, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and The Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Construction Manager's responsibility to comply with this Article 15 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

ARTICLE 16 - CITY LICENSES, PERMITS AND FEES

- 16.1 Pursuant to the Public Bid Disclosure Act, THE DOLLAR AMOUNT OF EACH LICENSE, PERMIT OR FEE THE CONSTRUCTION MANAGER WILL HAVE TO PAY THE CITY BEFORE OR DURING CONSTRUCTION, OR THE PERCENTAGE METHOD OR UNIT METHOD OF ALL LICENSES, PERMITS AND FEES REQUIRED BY THE CITY AND PAYABLE TO THE CITY BY VIRTUE OF THIS CONSTRUCTION AS PART OF THE CONTRACT IS AS FOLLOWS:
- 16.1.1 All fees payable to the City have been or will be paid by Owner. All permit fees to other governmental agencies will be paid by Owner. The Construction Manager shall be responsible for obtaining all necessary licenses, building and other permits, and similar authorizations from governmental authorities required or necessary to perform its obligations hereunder, and shall give all notices required by, and otherwise comply with, all applicable laws, ordinances, rules, regulations and restrictions.
- 16.1.2 Occupational Licenses must be in effect as required by applicable law, and must be submitted within fifteen (15) days of execution of this Contract, paid for by the Construction Manager.
- 16.1.3 Licenses, permits and fees which may be required by the State of Florida, State Agencies or by other local governmental entities are not included in the above.
- 16.2 The Construction Manager shall notify the Construction Administrator in writing of all conflicts between the Contract Documents and any laws, ordinances, rules, regulations and restrictions that come to the attention of the Construction Manager. If the

Construction Manager performs any of the Work knowing it to be contrary to any such laws, ordinances, rules, regulations or restrictions and fails to give the Construction Administrator written notice thereof prior to performance thereof, the Construction Manager shall bear all costs, liabilities and expenses arising therefrom as part of the GMP.

ARTICLE 17 – AIRPORT SECURITY

- 17.1 A portion of the Work will require access to Airport security areas. The Construction Manager shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States, the State of Florida, Escambia County and the City of Pensacola as they relate to Airport security requirements. The Construction Manager understands that the Airport is required to maintain an Airport Security Plan in compliance with Title 49 CFR Part 1542. The Construction Manager shall comply with applicable provisions of the Airport's security plan as it now exists or as it may be amended in the future and as it applies to the Construction Manager, the Project site, or the Construction Manager's operations or activities on the Airport, and shall take such steps as may be necessary or as directed by the City to require that the Construction Manager's subcontractors, employees, invitees, agents and guests observe these requirements.

The Construction Manager specifically agrees and recognizes that such laws and regulations may impede the efficiency of those working in secure areas and has accepted all risk associated with such potential inefficiency.

- 17.2 The Construction Manager shall fully indemnify, defend, and hold harmless Owner, its elected representatives, officers, agents, volunteers, and employees from and against all penalties, fines, or demands of any kind (including, but not limited to, costs of investigation, attorney fees, court costs, and expert fees) arising out of the Company's acts or omissions resulting in alleged violations of any rule, regulation, statute, order, directive or other mandate of the United States, the State of Florida, Escambia County or the City of Pensacola, including but not limited to Title 49 CFR Part 1542, "Airport Security," or any successor regulations related to Airport security.

ARTICLE 18 - PERSONNEL

- 18.1 All personnel used or employed by the Construction Manager in the performance of the Work shall be qualified by training and experience to perform their assigned tasks. At the request of Owner or the Construction Administrator, the Construction Manager shall not use in the performance of the Work any personnel deemed by Owner or the Construction Administrator to be incompetent, careless, unqualified to perform the work assigned to that person, or otherwise unsatisfactory to Owner.
- 18.2 The Construction Manager agrees that in the performance of the Work called for by this Contract, it will employ only such labor, and engage subcontractors that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the Project, and as will be acceptable to and work in harmony with all other workers.

employed on the Project site or on any other building, structure, or other improvement which the Construction Manager or any other contractor may then be erecting or altering on behalf of Owner.

ARTICLE 19 -CONSTRUCTION MANAGER'S WARRANTIES

19.1 The Construction Manager warrants to City and Tenant (Tenant being an intended third party beneficiary of the provisions of this Article 19) that all materials and equipment under this Contract will be new unless otherwise specified and that all of the Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by Construction Administrator, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 21.

19.2 The Construction Manager further represents and warrants to City and Tenant (Tenant being an intended third party beneficiary of the provisions of this Article 19):

That it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to perform this Contract; that it is able to furnish the Materials, and Services; that it is experienced in and competent to perform the Work contemplated by this Contract; and it is qualified to do the Work herein and is authorized to do business in the state in which the Project is located.

That the Construction Manager holds a license, permit or other special license to perform the services included in this Contract, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license.

That the Work shall be constructed in a good and proficient manner, free from defects, and in compliance with the Contract Documents in all material respects.

ARTICLE 20 - DEFECTIVE WORK

20.1 Construction Administrator shall have the authority to reject or disapprove work which Construction Administrator finds to be defective. If required by Construction Administrator, the Construction Manager shall promptly either correct all defective work or remove such defective work and replace it with nondefective work. The Construction Manager shall pay all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel. Such costs shall be included in the GMP.

20.2 Should the Construction Manager fail or refuse to remove or correct any defective work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by Construction Administrator, City shall have the authority to cause the defective work to be removed or corrected, or make such repairs as may be necessary at the Construction Manager's expense. Any expense incurred by City in making such removals, corrections or repairs, shall be paid for out of

any monies due or which may become due to the Construction Manager and deducted from the GMP, or may be charged against the Performance Bond. In the event of failure of the Construction Manager to make all necessary repairs promptly and fully, City may declare a default.

- 20.3 If, within one (1) year after the date of final completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Construction Manager, after receipt of written notice from City, shall promptly correct such defective or nonconforming Work within the time specified by City without cost to City. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which the Construction Manager might have under the Contract Documents.
- 20.4 Failure to reject any defective work or material shall not in any way prevent later rejection when such defect is discovered.
- 20.5 The provisions of this Article 20 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor or subcontractor of Owner unless the Construction Manager is acting in such capacity or capacities.
- 20.6 The Construction Manager's responsibility to make repairs and redo work under this Article 20 is in addition to the Construction Manager's responsibility to Owner for any other damages of any kind for which the Construction Manager would be legally responsible.
- 20.7 If Owner and the Construction Manager deem it inexpedient to require the correction of work damaged or not performed in accordance with the Contract Documents, an equitable deduction from the Contract Sum and the Guaranteed Maximum Price shall be made by agreement between the Construction Manager and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due the Construction Manager. If no moneys are held by Owner, reimbursement shall be made to Owner within thirty (30) days by the Construction Manager.
- 20.8 The Construction Manager's express warranty herein shall be in addition to, and not in lieu of, any other warranties or remedies Owner may have under this Contract, at law, or in equity for defective Work.
- 20.9 Notwithstanding the foregoing, except to the extent covered by insurance and except as otherwise provided in this Section, the Construction Manager and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to:
- (1) damages incurred by the Owner for rental expenses, for losses of use, income, revenue, 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 Contractor 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.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with this Agreement. Nothing contained in this Article shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

Notwithstanding the foregoing, if the Construction Manager defaults under this Contract and such default is not adequately remedied by the sureties or otherwise, so that Owner may be required to repay some or all of the funds paid by Escambia County, the State of Florida and/or its agencies, the U.S. Economic Development Agency, Triumph Gulf Coast, Inc. and others for the construction of the Project, then all such funds are excepted and excluded from this waiver of consequential damages.

ARTICLE 21 - QUALITY CONTROL

- 21.1 The Construction Manager shall develop and maintain a program, acceptable to Owner and Construction Administrator, to assure quality control of the construction. Within twenty-one (21) calendar days after issuance of the Notice to Proceed for construction, the Construction Manager shall submit its quality control plan to the Construction Administrator. Construction Administrator will review the Quality Control Plan and respond to the Contractor within twenty-one (21) calendar days of receipt. As part of that plan, the Construction Manager must designate a Quality Control Manager who has full authority to act as the Construction Manager's agent to institute any and all actions necessary for the successful implementation of the Plan. While any work is underway on the job site, the Quality Control Manager must always be available upon four (4) hours' notice to administer the Quality Control Plan.
- 21.2 All subcontracts shall include a term requiring subcontractors to comply with the Construction Manager's Quality Control Plan. If at any time the contractor or a subcontractor is not in compliance with the approved Quality Control Plan, or a part of it, affected portions of the Work will be deemed disapproved. In that event, the Construction Manager and/or subcontractors must cease work on the affected operation and submit to the Project Manager a written explanation of how the suspended operation will be brought back into compliance.

ARTICLE 22 - SIGNAGE

- 22.1 Any requirements for a project sign shall be as set forth within the Technical Specifications section.
- 22.2 All construction signage, including, but not limited to, that appearing on tower cranes and other construction equipment located at the Project Location, shall be subject to the

prior written approval of the Construction Administrator. The Construction Manager recognizes that all signage may be disallowed, in the Construction Administrator's sole discretion, and that existing signage or advertising on construction equipment, field officers, trailers, construction fences, etc., may be required to be masked or deleted, all at no cost or expense to Owner. Such signage will be considered an overhead expense pursuant to Section 10.4 and shall not be included within the Cost of the Work.

ARTICLE 23 - CITY'S RIGHT TO TERMINATE CONTRACT

- 23.1 If the Construction Manager fails to begin the Work within ten (10) calendar days after the Initiation Date, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work, or performs the Work unsuitably, or causes it to be rejected as defective and unsuitable, or discontinues the prosecution of the Work pursuant to the accepted schedule or if the Construction Manager fails to perform any material term set forth in the Contract Documents or if the Construction Manager becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or makes an assignment for the benefit of creditors, or for any other cause whatsoever does not carry on the Work in an acceptable manner, City may give notice in writing to the Construction Manager and its Surety of such delay, neglect or default, specifying the same. If the Construction Manager, within a period of ten (10) calendar days after such notice, has not cured the deficiency(ies) specified in such notice or, if such deficiency(ies) cannot reasonably be cured within ten days, has not commenced to cure such deficiency(ies) and does not thereafter diligently and continuously continue to cure such deficiency(ies) to completion, then City may upon written certificate from Construction Administrator of the fact of such delay, neglect or default and the Construction Manager's failure to comply with such notice, terminate the services of the Construction Manager, exclude the Construction Manager from the Project site and take the prosecution of the Work out of the hands of the Construction Manager, and appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable, all without being in breach of the Contract. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is completed. In addition City may enter into an agreement for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in City's sole opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs and charges incurred by City, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to the Construction Manager. In case the damages and expenses so incurred by City shall exceed the unpaid balance, then the Construction Manager and its surety shall be liable and shall pay to City the amount of said excess.
- 23.2 If after notice of termination of the Construction Manager's right to proceed, it is determined for any reason that the Construction Manager was not in default, the rights and obligations of City and the Construction Manager shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth in Section 23.3 below.

- 23.3 This Contract may be terminated for convenience in writing by City upon ten (10) days written notice to the Construction Manager (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, the Construction Manager shall be paid for all work executed and expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by the Construction Manager relating to commitments which had become firm prior to the termination. Payment shall include reasonable profit for work/services performed. No payment shall be made for profit for work/services which have not been performed.
- 23.4 Upon receipt of Notice of Termination pursuant to Sections 23.1 or 23.3 above, the Construction Manager shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available to City all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process.

ARTICLE 24 - CONSTRUCTION MANAGER'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

If Construction Administrator fails to review and approve or state in writing reasons for rejection of any Application for Payment within twenty (20) days after it is properly presented, or if City fails either to pay the Construction Manager within thirty (30) days after presentation by Construction Administrator of any sum certified by Construction Administrator, or to notify the Construction Manager and Construction Administrator in writing of any objection to the Application for Payment, then the Construction Manager may give written notice to City and Construction Administrator of such delay, neglect or default, specifying the same. If City or Construction Administrator (where applicable), within a period of ten (10) calendar days after such notice shall not remedy the delay, neglect, or default upon which the notice is based, then the Construction Manager may stop work or terminate this Contract and recover from City payment for all work executed and reasonable expenses sustained therein plus reasonable termination expenses. Any objection made by City to an Application for Payment may be submitted by the Construction Manager to Construction Administrator in accordance with the provisions of Article 30 hereof.

ARTICLE 25 - CITY'S RESPONSIBILITIES

- 25.1 Owner, at no cost to the Construction Manager, will furnish the following information:
- 25.1.1 One copy of data presently available to Owner that Owner deems pertinent to the Work. Notwithstanding the foregoing, the Construction Manager shall make a diligent effort to search the records and request information it deems reasonably required for the Project.
- 25.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
- 25.2 Owner additionally will:
- 25.2.1 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will

be provided to the Construction Manager as described in Article 1. The Construction Manager will have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to Owner and Design Professional.

- 25.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the Construction Manager except for those copies whose cost has been reimbursed by Owner.
- 25.2.3 Provide the Construction Manager with adequate information in its possession or control regarding Owner's requirements for the Project.
- 25.2.4 Give prompt written notice to the Construction Manager when Owner becomes aware of any default or defect in the Project or non-conformance with the Plans and Specifications, or any of the services required hereunder; provided that neither the giving of such notice or the failure to give any such notice shall relieve Construction Manager of any of its obligations under the Contract Documents. Upon notice of failure to perform, Owner may provide written notice to Construction Manager that it intends to terminate this Contract unless the problem cited is cured, or commenced to be cured, within three days of Construction Manager's receipt of such notice.
- 25.2.25 Notify the Construction Manager of changes affecting the budget allocations or schedule.
- 25.3 Owner will approve the Project Budget and Project Schedule, and render decisions and furnish information that the Construction Administrator deems appropriate to the Construction Manager.

ARTICLE 26 - CONTRACT CONDITIONS

26.1 PROJECT DOCUMENTS AND COPYRIGHTS

- 26.1.1 City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents) shall be and remain the property of Owner and shall be delivered to the Construction Administrator before the final payment is made to the Construction Manager. Nonetheless, in the event these Project Documents are altered, modified or adapted without the written consent of the Construction Manager, which consent the Construction Manager shall not unreasonably withhold, Owner agrees to hold the Construction Manager harmless to the extent permitted by law, from the legal liability arising out of and or resulting from Owner's alteration, modification or adaptation of the Project Documents.
- 26.1.2 Construction Manager to Retain Copyrights: Subject to Section 26.1.1, the copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the Construction Manager, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the Construction Manager.

26.1.3 License to City for Reasonable Use: Without limiting the generality of Section 26.1.1, the Construction Manager hereby grants, and will require its Subconsultants to grant, a license to Owner, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require Owner to alter or modify the Project Documents, then Section 26.1.1 applies.

26.1.4 Documents to Bear Seal: When applicable and required by state law, the Construction Manager and its Subconsultants will endorse by a Florida professional seal all plans, works, and Deliverables prepared by them for this Contract.

26.2 COMPLETENESS AND ACCURACY OF CONSTRUCTION MANAGER'S WORK

The Construction Manager will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other design phase Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole expense correct its work or Deliverables. Any damage incurred by Owner as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to the Construction Manager to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional Construction Manager in Pensacola, Florida would exercise under similar conditions. The fact that Owner has accepted or approved the Construction Manager's work or Deliverables will in no way relieve the Construction Manager of any of its responsibilities under the Contract, nor does this requirement to correct the work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to Owner. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the design architect.

26.3 ALTERATION IN CHARACTER OF WORK

26.3.1 In the event an alteration or modification in the character of work or Deliverable results in a substantial change in this Contract, thereby materially increasing or decreasing the scope of services, cost of performance, or Construction Schedule, the work or Deliverable will nonetheless be performed as directed by Owner. However, before any altered or modified work begins, a Change Order or Amendment will be approved and executed by Owner and the Construction Manager. Such Change Order or Amendment will not be effective until approved by Owner.

26.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the Construction Manager may accordingly be adjusted by mutual agreement of the contracting parties.

26.3.3 No claim for extra work done or materials furnished by the Construction Manager will be allowed by Owner except as provided herein, nor will the Construction Manager do any work or furnish any material(s) not covered by this Contract unless such work or material is first

authorized in writing. Work or material(s) furnished by the Construction Manager without such prior written authorization will be the Construction Manager's sole jeopardy, cost, and expense, and the Construction Manager hereby agrees that without prior written authorization from Owner no claim for compensation for such work or materials furnished will be made.

26.4 DATA CONFIDENTIALITY

- 26.4.1 As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the Construction Manager in the performance of this Contract. Without limiting the generality of the foregoing, data expressly includes all of Tenant's "Smart MRO" and "Smart City" technology obtained by the Construction Manager in the performance of this Contract.
- 26.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Construction Manager in connection with the Construction Manager's performance of this Contract shall be treated in conformity with provision of Section 13.5.
- 26.4.3 Subject to the requirements of Section 13.7, the Construction Manager will not divulge data to any third party without prior written consent of Owner or, in the case of Tenant's "Smart MRO" or "Smart City" technology, Tenant. The Construction Manager will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:
- 26.4.3.1 Data which was known to the Construction Manager prior to its performance under this Contract unless such data was acquired in connection with work performed for Owner;
- 26.4.3.2 Data which was acquired by the Construction Manager in its performance under this Contract and which was disclosed to the Construction Manager by a third party, who to the best of the Construction Manager's knowledge and belief, had the legal right to make such disclosure and the Construction Manager is not otherwise required to hold such data in confidence; or
- 26.4.3.3 Data, which is required to be disclosed by the Construction Manager by virtue of law, regulation, or court order.
- 26.4.4 In the event the Construction Manager is required or requested to disclose data to a third party, or any other information to which the Construction Manager became privy as a result of any other contract with Owner, the Construction Manager will first notify Owner or, in the case of Tenant's "Smart MRO" or "Smart City" technology, Tenant, as set forth in this Article of the request or demand for the data. The Construction Manager will timely give Owner or Tenant, as the case may be, sufficient facts, such that Owner or Tenant, as the case may be, can have a meaningful opportunity to either first give its consent or take such action

that Owner or Tenant, as the case may be, may deem appropriate to protect such data or other information from disclosure.

- 26.4.5 The Construction Manager, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by Owner, will promptly deliver, as set forth in this section, a copy of all data to Owner. All data will continue to be subject to the confidentiality agreements of this Contract.
- 26.4.6 The Construction Manager assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate Owner or Tenant, as the case may be, if any of the provisions of this section are violated by the Construction Manager, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

26.5 PROJECT STAFFING

- 26.5.1 Attached hereto as Exhibit "F" is an organization chart for the Construction Manager staff and Subconsultants (collectively, "Key Personnel") listed in its response to Owner's Request for Qualifications or subsequent fee proposals (or revisions thereto) that will be involved in performing the services prescribed in the Contract. Upon Owner's request, Construction Manager shall promptly provide to Owner detailed resumes of all Key Personnel. Owner hereby acknowledges its acceptance of such Key Personnel to perform such services under this Contract. In the event the Construction Manager desires to change such Key Personnel from performing such services under this Contract, the Construction Manager will submit the qualifications of the proposed substituted personnel to Owner for prior approval. Key Personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning. Construction Manager acknowledges that its representations to Owner that it is partnering with Greenhut Construction Company to provide the services required by this Contract is a material inducement for Owner to enter into this Contract. Construction Manager shall use its best efforts to maximize the participation of Greenhut Construction Company and its key personnel (Bill Greenhut, Ryan Greenhut, Kevin Spellman, and Randy Talcott) in the performance of the Construction Manager's obligations under this Contract.
- 26.5.2 The Construction Manager will maintain an adequate number of competent and qualified persons, as determined by Owner, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If Owner objects, with reasonable cause, to any of the Construction Manager's staff, the Construction Manager will take prompt corrective action acceptable to Owner and, if required, remove such personnel from the Project and replace with new personnel acceptable to Owner.

26.6 INDEPENDENT CONTRACTOR

- 26.6.1 The Construction Manager is and will be an independent contractor, not an agent or employee of Owner, and whatever measure of control Owner exercises over the work or Deliverable pursuant to the Contract will be as to the results of the work only. No provision

in this Contract will give or be construed to give Owner the right to direct the Construction Manager as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances. The Construction Manager shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract, unless the Contract Documents give other specific instructions concerning these matters.

26.7 SUBCONSULTANTS

- 26.7.1 Prior to beginning the work or Deliverable, the Construction Manager will furnish Owner for approval, the names of all Subconsultants to be used on this Project. Subsequent changes are subject to the approval of Owner.

ARTICLE 27 - INSURANCE; LOSS CONTROL AND SAFETY

- 27.1 Before beginning performance of any of the Construction Manager's obligations under this Contract, the Construction Manager shall at a minimum provide, pay for and maintain in force at all times during the term of this Contract (and thereafter if and to the extent expressly provided in this Article) insurance of the type and on the terms and conditions specified in this Article. The cost of this insurance shall be included in the Guaranteed Maximum Price.
- 27.2 The Contractor shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability and Business Auto policies filed by the Insurance Services Office. Owner and Tenant shall be named as Additional Insureds and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this Contract. Neither Owner nor the Tenant shall be considered liable for premium payment, entitled to any premium return or dividend or considered a member of any mutual or reciprocal company. Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to Owner, for Owner's protection only.
- 27.3 The term City as used in this section of the Contract is defined to mean the City of Pensacola itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, and representatives. Construction Manager shall maintain its professional insurance coverage required under this Contract in force until final acceptance of the Project or completion of the Construction Manager's services under this Contract. Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to Owner, for Owner's protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:
- 27.3.1 Commercial General Liability coverage will be provided by the Construction Manager and shall provide at a minimum contractual liability applicable to this specific Contract, personal injury liability and property damage liability. Owner and Tenant shall be named as Additional Insureds and such coverage shall be at least as broad as that provided to the

Named Insured under the policy for the terms and conditions of this Contract. Neither Owner nor the Tenant shall be considered liable for premium payment, entitled to any premium return or dividend or considered a member of any mutual or reciprocal company. Minimum limits of \$5,000,000 per occurrence and aggregate for liability must be provided, plus additional umbrella insurance coverage of \$15,000,000. These limits can be met through a combination of Primary and Excess coverage. If the required limits of liability afforded should become impaired by reason of any claim, then the Contractor agrees to have such limits reinstated under the policy. The coverage shall be written on occurrence-type basis. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, and must include:

Premises and/or operations.

Contractual Liability.

Independent contractors.

The Construction Manager shall maintain in force until at least three (3) years after completion of all work required under the Contract coverage for Products and Completed Operations, including broad form Property Damage.

Explosion, Collapse and Underground Coverages.

Use of explosives is prohibited on airport property.

Property Damage and Bodily Injury.

Personal and Advertising Injury Coverage

City and Tenant shall be expressly included as additional insureds.

- 27.3.2 Builder's Risk Insurance coverage will be provided by the Construction Manager with Coverage afforded on an Inland Marine "All-Risk" type form which includes collapse coverage. Coverage provided must be provided on a form that is acceptable, upon review, to Owner.

The Amount of Insurance is to be 100% of the completed value of the work described in this Contract. Such coverage will additionally include an Amount of Insurance of \$5,000,000 for materials and equipment stored off the construction site, in transit or delivery, including loading and unloading, or such higher amount as Owner requests, at Owner's expense, prior to the parties' execution of the GMP Amendment. At Owner's option and expense, the limits of insurance shall additionally include any damages suffered by Owner or Tenant due to any delay of completion of the work described in this Contract caused by an insurable loss. Deductible is subject to City of Pensacola approval.

The policy must be specifically endorsed to eliminate any "Occupancy" clause or similar warranty or representation that the premises in the course of construction shall not be occupied or used without specific endorsement of the policy. The policy must be endorsed to provide that the Builder's Risk Coverage will continue to apply until final acceptance of the work described in this Contract by Owner, which acceptance shall not be deemed to have been made solely on account of occupancy of any portion of the premises by Owner or Tenant.

Owner and Tenant shall be listed as Named Insureds by endorsement on the policy as well as the Certificate of Insurance and a certified copy of the policy shall be supplied to Owner.

The policy shall contain a "Waiver of Subrogation" clause in favor of Owner Tenant, and their respective subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives, and agents which would waive any subrogation against any of them.

The policy shall contain no exclusion which would exclude damage or loss caused by breakage, freezing, temperature extremes or temperature change, water, leakage, or seepage.

27.3.3 Rigger's liability insurance coverage in the amount of \$5,000,000 shall be provided Owner and the Tenant shall be named as Additional Insureds.

27.3.4 Contractor's pollution liability insurance coverage in the event the Construction Manager is called upon to remediate and/or render harmless any Hazardous Substance discovered in the course of construction as stated in Section 15.3 with minimum limits of \$1,000,000, per occurrence and in the aggregate, with a self-insured retention of \$750,000, provided that Owner, may, at Owner's expense, require a project specific policy with a lower retention amount.

27.3.5 Business Automobile Liability: Business Automobile Liability with minimum limits of Three Million Dollars (\$3,000,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability, with additional umbrella insurance coverage of \$15,000,000. These limits can be met through a combination of Primary and Excess coverage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned Vehicles.

Hired and Non-Owned Vehicles.

27.3.6 Workers' Compensation Insurance: Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of \$1,000,000 per person/accident, \$1,000,000 per person/disease, \$1,000,000 aggregate-disease.

- 27.3.7 Professional Liability coverage will be provided by the Construction Manager with minimum limits of \$10,000,000 per occurrence and in the aggregate, with a self-insured retention of not more than \$750,000.
- 27.4 The Construction Manager shall furnish to the Risk Management Department of Owner of Pensacola and Owner Representative Certificates of Insurance or endorsements evidencing the insurance coverages specified by this Article prior to beginning performance of work under this Contract. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Contract, and state that such insurance is as required by this Contract.
- 27.5 Coverage is to remain in force until all performance required of the Construction Manager is completed. However, Products and Completed Operations coverage under the General Liability Policy must remain in effect 3 years after job is completed. All policies must be endorsed to provide City with at least thirty (30) days' notice of cancellation, nonrenewal, and/or adverse change or restriction in coverage. If any of the insurance coverages will expire prior to the completion of the Project, Certificates of Insurance complying with Section 27.6 for the renewal policies, as well as notice of any material changes shall be furnished at least thirty (30) days' prior to the date of their expiration.
- 27.6 Certificates Of Insurance

Required insurance shall be documented in the Certificates of Insurance which provide that Owner of Pensacola shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. Owner of Pensacola shall be named on each Certificate as an Additional Insured, except with respect to Professional Liability and Workers Compensation Insurance, and this contract shall be listed. If required by Owner, the Construction Manager shall furnish copies of the Construction Manager's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by Owner an ACORD 25. Any wording in a Certificate which would make notification of cancellation, adverse change or restriction in coverage to Owner an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee. The Construction Manager shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies acceptable to Owner and shall file with Owner Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to Owner, the Construction Manager shall, upon instructions of Owner, cease all operations under the Contract until directed by Owner, in writing, to resume operations.

27.7 Insurance of the Construction Manager Primary

The Construction Manager's required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the Construction Manager's coverage. The Construction Manager's policies of coverage will be considered primary as relates to all provisions of the Contract.

27.8. LOSS CONTROL AND SAFETY

The Construction Manager shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, the Construction Manager shall not be deemed to be an agent of Owner. Precaution shall be exercised at all times by the Construction Manager for the protection of all persons, including employees, and property. The Construction Manager shall make reasonable effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

ARTICLE 28 - INDEMNIFICATION

- 28.1 The Construction Manager shall indemnify and hold harmless Owner, its officers and employees, from liabilities, damages, losses and costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Construction Manager and persons employed or utilized by the Construction Manager in the performance of this Contract. This indemnification survives the termination of the Contract.
- 28.2 The Construction Manager shall indemnify and hold harmless the Tenant and the Construction Administrator and their respective officers and employees from liabilities, damages, losses and costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Construction Manager and persons employed or utilized by the Construction Manager in the performance of this Contract. This indemnification survives the termination of the Contract.
- 28.3 In any and all claims against Owner or any other indemnified person or entity or any of their agents or employees brought by any employee of the Construction Manager or any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any subcontractor under worker's or workman's compensation acts, disability benefit acts or other employee benefit acts.
- 28.4 The monetary limits on the extent of the indemnification provided per occurrence under this Article shall be \$15 million. Owner and the Construction Manager specifically agree that this amount bears a reasonable commercial relationship to the Contract.

ARTICLE 29 - PERFORMANCE AND PAYMENT BOND AND QUALIFICATIONS OF SURETIES

- 29.1 Concurrently with the execution of the GMP Amendment, the Construction Manager shall furnish a Performance Bond and a separate Payment Bond containing all the provisions of the Performance Bond and Payment Bond attached hereto as Attachment 1.
- 29.1.1 Each Bond shall be in the amount of one hundred percent (100%) of the Guaranteed Maximum Price guaranteeing to City the timely completion and performance of the work covered in such Contract as well as full payment of all suppliers, material providers, laborers, or subcontractors employed pursuant to this project. Each Bond shall be with a surety company which is qualified pursuant to Section 29.2.
- 29.1.2 Each Bond shall be prepared so as to be subject to the Florida Statute of Limitations specified in § 95.11(2)(b) Florida Statutes, with liability equal to one hundred percent (100%) of the Contract sum.
- 29.1.3 Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, as may be amended from time to time, the Construction Manager shall ensure that the bond(s) referenced above shall be recorded in the public records of Escambia County and provide City with evidence of such recording.
- 29.2 Qualification of Surety
- 29.2.1 Each bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five years.
- 29.2.2 The surety company shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR Section 223.10, Section 223.111). Further, the surety company shall provide City with evidence satisfactory to City that such excess risk has been protected in an acceptable manner.
- 29.2.3 Owner will only accept a surety bond from a company with a rating of A or better provided, however, that if any surety company appears on the watch list that is published quarterly by Intercom of the Florida Department of Financial Services, Owner shall review and either accept or reject the surety company based on the financial information available to Owner. A surety company that is rejected by Owner may be substituted by the bidder or proposer with a surety company acceptable to Owner, but only if the bid amount does not increase.

ARTICLE 30 – DISPUTE RESOLUTION

- 30.1 Dispute Resolution. The parties hereto agree that Construction Administrator shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Contract as to the character, quality, amount and value of any work done and materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents and Construction Administrator's estimates and decisions upon all claims, questions, difficulties and disputes shall be final and binding to the extent provided in this Article. Any claim, question, difficulty or dispute which cannot be resolved by mutual agreement shall be submitted to Construction Administrator in writing within twenty-one (21) calendar days. Construction Administrator shall notify City and Construction Manager in writing of Construction Administrator's decision within twenty-one (21) calendar days from the date of the submission of the claim, question, difficulty or dispute, unless Construction Administrator requires additional time to gather information or allow the parties to provide additional information. Construction Administrator shall provide Owner and Construction Manager with a written basis for the decision. All nontechnical administrative disputes shall be determined by the Owner Representative pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, Construction Manager, Construction Administrator, and City shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.

In the event the determination of a dispute under this Article is unacceptable to any of the parties hereto, the party objecting to the determination must notify the other party in writing within ten (10) days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract Price or Contract Time adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. The parties shall participate in mediation before a mediator mutually agreed upon by the parties to address such objection within sixty (60) days after a written request for mediation is delivered by either party to the other. In any event, within sixty (60) days after Final Completion of the Work, the parties shall participate in mediation to address all pending objections before a mediator mutually agreed upon by the parties. Any mediation under this paragraph shall be conducted by a mediator certified by the Florida Supreme Court with substantial experience in mediating construction disputes. If the parties cannot agree on a mediator, then they shall request the American Arbitration Association to select a mediator from its list of construction mediators. Mediation shall be a condition precedent to filing a legal action; however, a party may file an action to meet the statute of limitations if it requests the proceedings be stayed pending the outcome of mediation. Each party shall pay it pro rata share of fees associated with the use of a mediator. Mediation shall be done in accordance with the standards of the Florida Rules of Civil Procedure. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. If a party objecting to a determination fails to comply in strict accordance with the requirements of this Article, said party

specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

Construction Manager and Owner agree that Construction Administrator and Design Professional may be brought into any mediation or litigation as a party upon written demand of either party and approval of the mediator or court.

Pending resolution of any dispute arising under this Contract, other than termination hereof, the Construction Manager shall proceed diligently with performance of this Contract and Owner shall continue to make payments in accordance with the Contract Documents.

ARTICLE 31 – NON-SOLICITATION STATEMENT

- 31.1 The Construction Manager warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager to solicit or secure this Contract and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Construction Manager any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 32 - MISCELLANEOUS

- 32.1 Venue Selection. This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida and the applicable laws of the United States of America. Venue for litigation concerning this Contract shall be exclusively in the appropriate Florida state court located in Escambia County, Florida.
- 32.2 Truth in Negotiation Certificate. Execution of this Contract by the Construction Manager shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete, and current as of the date of this Contract. The said rates and costs shall be adjusted to exclude any significant sums should the Owner determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The Owner shall exercise its rights under this "Certificate" within one (1) year following payment.
- 32.3 This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida and the applicable laws of the United States of America. Venue for litigation concerning this Contract shall be exclusively in the appropriate Florida state court located in Escambia County, Florida.

32.4 Public Entity Crimes Act

32.4.1 The Construction Manager represents that the execution of this Contract will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes).

32.4.2 In addition to the foregoing, the Construction Manager further represents that the it has not been placed on the convicted vendors list as described in Florida Statute 287.133(2) (a); that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime"; and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether the Construction Manager has been placed on the convicted vendor list.

32.5. Ownership of Contract Documents: Any and all reports, photographs, surveys, Plans, Specifications, detail drawings and other drawings prepared or created in connection with the Project are and shall remain the property of Owner and are not to be used by the Construction Manager on any other project and shall be relinquished to Owner at Final Completion or upon termination, whether finished or unfinished; provided, however, that the Construction Manager may maintain one record set of as-built drawings.

32.6. Representatives

32.6.1 The Construction Administrator and the Owner Representative shall be Owner's representatives on the Project unless and until Owner notifies the Construction Manager in writing that some other person or entity shall be Owner's representative. The Construction Administrator is authorized to recommend approval of Changes and increases in the Contract Price, but Contract Documents and Changes shall be binding on Owner only if signed by Owner.

32.6.2 The Construction Manager shall advise Owner, in writing, of any limitations on the authority of the Construction Manager's Representative; otherwise, the Construction Manager's Representative shall be considered to have full authority to execute any and all instruments requiring the Construction Manager's signature and to act on behalf of the Construction Manager with respect to all matters arising out of this Contract.

32.7 Assignment: The Construction Manager shall not assign this Contract or subcontract it as a whole without the written consent of Owner; nor shall the Construction Manager assign any monies due or to become due to it hereunder, without the previous written consent of Owner. Owner shall not assign this Contract without the written consent of the Construction Manager.

32.8 Nondiscrimination, Equal Employment Opportunity and Americans With Disabilities Act: The Construction Manager agrees that it will not discriminate against any employee or applicant for employment for work under this Contract because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. the Construction Manager agrees to furnish City with a copy of its Affirmative Action Policy.

- 32.9 Waiver: No consent or waiver, express or implied, by either party to this Contract to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party hereunder, nor deemed to be a modification of this Contract. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection by, payment by or tentative approval or acceptance by Owner, or the failure of Owner to perform any inspection hereunder, shall not constitute a final acceptance of the Work or any part thereof and shall not release the Construction Manager from any of its obligations hereunder.
- 32.10 Construction of Terms: Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other. The term "person" shall be deemed to include an individual, corporation, unincorporated organization, partnership, trust, government and governmental agency or subdivision, as the context shall require.
- 32.11 Captions: The captions used for the Articles and Sections in this Contract are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Contract or any Article or Section hereof.
- 32.12 Entire Agreement: Severability: Amendments: These Contract Documents incorporate and include all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Contract that are not contained in the Contract Documents. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Article 9 above. In the event any provision of the Contract Documents shall be found by a court of competent jurisdiction to be invalid or otherwise unenforceable, the remainder of this Contract shall not be affected thereby and each remaining provision, term, covenant or condition of the Contract Documents shall continue to be effective.
- 32.13 Notices: All notices to be given hereunder shall be in writing, and may be given (i) by depositing the same in the United States Mail, Federal Express, UPS, or other reputable overnight delivery service addressed to the party to be notified, fees prepaid, for next business day delivery; or (ii) by delivering the same in person to such party with a request for a written receipt of acknowledgment of delivery. All notices to be given to the parties hereto shall be sent to or made to the addresses shown below. The place for giving notice shall remain the same as set forth herein unless changed in the manner provided in this Section. Any notice sent pursuant to this Contract from one party to the other shall be deemed delivered on and as of (a) the next business day if sent for next

business day delivery via United States Mail, Federal Express, UPS or other reputable overnight delivery service, or (b) the day of actual receipt if delivered in person.

For City:

Daniel E. Flynn,
Airport Director
2430 Airport Boulevard, Ste. 225
Pensacola, Florida 32504

For the Construction Manager:

Michael Tortorici, PE
Brasfield & Gorrie, L.L.C.
1201 Demonbreun Street
Suite 200
Nashville, Tennessee 37203

32.14 Counterparts: This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

32.15 Other Terms and Conditions

32.15.1 Neither the Construction Manager nor City intends to directly or substantially benefit a third party by this Contract other than the Tenant, it being expressly agreed that the Tenant is an intended third-party beneficiary of the following provisions of the Contract: Article 19 and Article 20. Therefore, the parties agree that other than the Tenant, there are no third party beneficiaries to this Contract and that other than the Tenant, no third party shall be entitled to assert a claim against either of them based upon this Contract.

32.15.2 Neither the Construction Manager nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic to or incompatible with the Construction Manager's loyal and conscientious exercise of judgment related to its performance under this Contract. The Construction Manager agrees to prohibit its subcontractors, by written contract, from having any conflicts within the meaning of this Section.

32.15.3 Preparation of this Contract has been a joint effort of City and the Construction Manager and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

32.15.4 It is a requirement of City that it enter into contracts only with firms that certify the establishment of a drug free work place in accordance with Florida Statute. Execution of this Contract by the Construction Manager shall also serve as the Construction Manager's

required certification that it either has or that it will establish a drug free work place in accordance with Florida Statute 287.087.

32.15.5 The Construction Manager agrees to comply with the provisions of Attachment 2, "Federal Requirements for Airport Projects." The provisions of Attachment 2 are a material and integral part of this Contract and are hereby incorporated herein by reference. As used in Attachment 2, the words "contractor", "consultant", "proposer", "offeror", "bidder", "employer", and "applicant", including but not limited to capitalized versions of such words, mean and refer to the Construction Manager; provided that for the Equal Employment Opportunity (EEO) provision, the term "applicant" means an applicant for employment, whether or not the phrase "for employment" follows the word "applicant" or "applicants". The unanticipated cost impacts, if any, of the requirements of Attachment 2 will be negotiated as part of the GMP amendment and included in the Cost of the Work.

32.15.6 The Construction Manager agrees to comply with the provisions of Attachment 3, "Project Titan Grant Requirements." The provisions of Attachment 3 are a material and integral part of this Contract and are hereby incorporated herein by reference. The unanticipated cost impacts, if any, of the requirements of Attachment 3 will be negotiated as part of the GMP amendment and included in the Cost of the Work.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

Attest:


Ericka L. Burnett, City Clerk

[AFFIX CITY SEAL]

Approved as to Content:

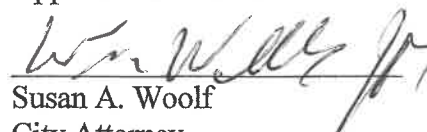

Daniel E. Flynn, Airport Director

OWNER:

CITY OF PENSACOLA,
a Florida municipal corporation

By: 
Grover C. Robinson, IV, Mayor

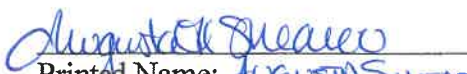
Approved as to Form:


Susan A. Woolf
City Attorney

CONSTRUCTION MANAGER:

BRASFIELD & GORRIE, L.L.C.,
a Delaware limited liability company

Attest:


Printed Name: AUGUSTUS SHEARER
Title: REG. EXEC. ASSIST.

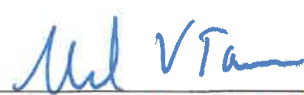
By: 
Printed Name: Michael V. Tartorici
Title: VP/ Division Manager

EXHIBIT A - PROJECT DESCRIPTION

Project Titan Element 1:

- Element 1 will be constructed adjacent to Hangar 1 in the northeast quadrant of airfield
- MRO Hangar 2
- Aircraft taxiways accessing the hangar aprons
- Aircraft aprons at the hangar
- Automobile ingress and egress roadways and auto parking

Project Titan Element 2:

- Element 2 will be constructed in the northwest quadrant of airfield
- MRO Hangar 3
- MRO Hangar 4
- MRO Support Services Center
- Administrative Office Building
- Aircraft taxiways accessing the hangar aprons
- Aircraft aprons at the hangars
- Automobile ingress and egress roadways and auto parking

EXHIBIT B

ESTIMATED CONSTRUCTION MANAGER'S DIRECT CONSTRUCTION COST

Based on ____% Contract Documents as of _____

CONSTRUCTION COSTS

Item#	Description	Cost Estimate
DC-1		\$
DC-2		\$
DC-3		\$
DC-4		\$
DC-5		\$
DC-6		\$
DC-7		\$
DC-8		\$
DC-9		\$
DC-10		\$
DC-11		\$
DC-12		\$
DC-13		\$
DC-14		\$
DC-15		\$
DC-16		\$
DC-17		\$
DC-18		\$
DC-19		\$
DC-20		\$
DC-21		\$
DC-22		\$
DC-23		\$
DC-24		\$
DC-25		
TOTAL ESTIMATED DIRECT CONSTRUCTION COST		\$0

The above breakdown of Direct Construction Costs is estimated values, not contractual limits. The Total Estimated Direct Construction cost is included in the GMP. The Schedule of Values, per Section 10.5.4. will be the basis of the monthly progress billings.

The above listed Construction Costs do not include:

- General Conditions
- Insurance & Bonds
- Construction Manager's Management Services
- Reconstruction Services
- Consideration for Indemnification
- Contract Documents Completion Allowance
- Construction Manager's Contingency
- Construction Manager's Fee
- City Allowance Account

EXHIBIT C
CONSTRUCTION MANAGER'S GENERAL CONDITIONS
DIRECT CONSTRUCTION COST

Item#	Description	Element 1	
GC-1.0	<i>On-Site Offices</i>		
	Office Trailer - Set up & Breakdown sgl	\$58,225	
	Office Trailer	\$82,028	
	Office Trailer Water Line	Included	
	Office Supplies & Equip	\$12,094	
	Storage Vans	\$15,275	
	Temporary Site Signage	\$538	
	Project Sign	\$6,450	
	Office computers/fax/furniture	\$20,425	
	Postage & Shipping	\$8,063	
	Telephone	Included	
	Telephone Installation	\$8,062	
	iPad	Included	
	Internet Set up/ Service	\$10,500	
	Reproducible drawings	Included	
	Temp toilets	Included	
	Ice & Cups	\$5,375	
	Sales Tax on General Conditions Materials	Included	
	Misc GCs	Included	
GC-2.0	<i>Temporary Utilities</i>		
	Temporary Power	\$12,375	
	Temporary Water	\$4,837	
	Perm Power (.13/sf per mo)	\$50,000	* Allowance
GC-3.0	<i>Temporary Construction Services</i>		
	Superintendent	\$670,950	
	Assistant Superintendent	Included	
	Sr. Project Manager	\$1,044,186	
	Project Manager	Included	
	Admin	\$308,007	
	Phones	Included	
	Fuel for Vehicles	Included	
	Supt/PM Vehicle	Included	
	Video and Aerials	Included	
	CPM/Schedule	\$50,000	* Allowance
	Layout Services & Survey	Included	
	Miscellaneous Layout & Batter Boards	Included	
	Skilled Carpenters and Foremen	Included	
	Laborers	\$0	
	Civil Engineer	\$0	

EXHIBIT C
CONSTRUCTION MANAGER'S GENERAL CONDITIONS
DIRECT CONSTRUCTION COST

Item#	Description	Element 1
	Quality Control Manager	\$55,393
	Out of Town Living	
	PM Living & Travel Expenses	\$250,880
	Supervision Living	\$34,120
GC-4.0	Clean Up	
	Final Clean-up and Clean Glass	\$21,800
	Floor Protection	Included
	Daily Clean Up	Included
GC-5.0	Safety	
	Safety Officer	\$184,245
	Safety and Barricades	\$23,623
	Drug Testing	Included
	Temp Const Fencing	\$5,000
	Site Security	
	Utility Location Services	\$4,000
GC-6.0	Testing & Inspection	
	Inspection and Punch Out	Included
	Call Back and Warranty Work	Included
GC-7.0	Fees & Permits	
	Building Permit	
	Builders Risk Insurance	
	General Liability Insurance	
	Subcontractor Bonds	
	P&P Bond	
	General Conditions (GC's, Equipment, Field Labor) Markup	
	CM Fee	
	Contractor Contingency	

* Allowance

EXHIBIT C
CONSTRUCTION MANAGER'S GENERAL CONDITIONS
DIRECT CONSTRUCTION COST

Item#	Description	Element 1
GC-8.0	<i>Equipment</i>	
	Misc.Monthly Purchases	Included
	Miscellaneous Equipment Rental	\$38,769
	Job Tools	Included
	Ride On Sweeper	Included
	Forklift Shooting Boom 9,000 lb	Included
	Backhoe 4WD Extendahoe	Included
	Dumpster Picks	Included
	Fuel for Equipment	Included
	Equip Repairs & Maint.	Included
Total General Conditions		\$2,985,220

EXHIBIT D - SUBMITTAL REQUIREMENTS FOR THE GMP

A preliminary GMP Proposal is due when Construction Documents (CD) are progressed to at least 60% completion. A final GMP Proposal is due when Construction Documents are progressed to 95% completion (unless City requests a final GMP Proposal at an earlier stage).

GMP proposal(s) submittals; one original and four (4), copies will be requested by Owner for review by City, Construction Administrator and Design Professional.

Table of Contents:

1. Scope of Work
 2. Summary of the GMP
 3. Schedule of Values - summary spreadsheet and backup documents
 4. List of Plans and Specifications used for GMP Proposal
 5. List of clarification and assumptions
 6. Construction Schedule
1. Scope of work will consist of a brief description of the work to be performed by Construction Manager and major points that the Construction Manager and Owner must be aware of pertaining to the scope.
 2. All substantiating data utilized in compilation of items "B" thru "D" will also be submitted as an Exhibit to this contract.

The general condition fee includes bond and insurance cost. All costs should be listed individually for future use.

PROJECT #:

DATE:

PROJECT NAME:

GMP Summary				Amount	
A.	Cost of Work (Labor, Materials, Equipment, Warranty)			\$	
INDIRECT COSTS			RATE		
B.	CM Contingency			% \$	
C.	Constuction Fee			% \$	
D.	General Conditions			% \$	
	D1	Payment and Perfomance bond	\$	%	
	D2	Insurance	\$	%	
E.	Sales Taxes			%	
				F. TOTAL GMP	\$
				G. Owner's Contingency	\$

Formulas:

Total GMP: $A+B+C+D+E = F$

Rates (Percentages) are calculated by dividing each amount by F, such as B/F , D/F , and $D1/F$

(Do not acquire bond or insurance until notified by Owner.)

3. Schedule of Values - spread sheet with the estimated cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the Construction Manager's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values.
4. A list of the Plans and Specifications with latest issuance date including all revisions used in preparation of the GMP proposal.
5. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP proposal, to supplement the information contained in the documents.
6. A Critical Path Method diagram construction schedule.
7. After cost of GMP has been agreed upon, detailed breakdown of Cost of General Conditions and other elements of GMP cost shall be included herein as attachment "A" and in Construction Contract as Exhibit "C".

NOTE: The submittal package must be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

For questions regarding the submittal requirements, please contact:

Mr. Daniel E. Flynn
Pensacola International Airport
2430 Airport Blvd., Suite 225
Pensacola, FL 32504
PH. (850) 436-5000
FX: (850) 436-5006

Note 1: Insert authorized attester if known and their title.

Note 2: Insert the authorized Construction Manager attester (normally the Corporate Secretary or the Assistant Corporate Secretary of the Construction Manager office executing the contract.

EXHIBIT "E"

COSTS MATRIX

Pensacola Airport - MRO Campus Project

PROJECT COST ALLOCATION MATRIX

	Cost of Work (TBD)	General Conditions	Bond/Insurance Costs (% inc. in proposal)	Fee	Design Fees (NIC)	Owner Carried Costs	Comments
Project Team Personnel							
Owner Personnel Cost						X	
Program Manager Fees & Expenses						X	
Architect Design Fees & Expenses					X		
Structural Engineer Fees & Expenses					X		
MEP Engineer Fees & Expenses					X		
Geotechnical Engineer Fees & Expenses					X		
Environmental Consultant Fees & Expenses					X		
Testing & 3rd Party Inspection Services					X		
Commissioning Agent						X	
Professional Land Surveyor						X	
Officers' Salaries & Benefits				X			
Corporate Management				X			
Estimating Personnel /Preconstruction Management	X						
Operations Management		X					
Project Management (Onsite or Offsite)		X					
Quality Manager		X					
General Superintendent		X					
Superintendent		X					
Trade Managers	X						
Trade Superintendents & Foremen	X						
Trade Quality Managers	X						
Field Engineering	X						
Field Labor	X						
Safety Managers / Personnel		X					
Home Office Admin Assistant		X					
Home Office Overhead (i.e. Human Resources, Legal, Payroll, etc.)				X			
Project Accounting		X					
BIM Coordination	X				X		Assume Design will include production of a full BIM Model for CMARs use at each design deliverable
Personnel Travel and Living Expense							
Travel Expenses		X					For personnel inc. in Gen. Cond.
Truck Allowances / Mileage Reimbursement		X					For personnel inc. in Gen. Cond.
Per Diem's / Out of Town Living		X					For personnel inc. in Gen. Cond.
Relocation cost of staff		X					For personnel inc. in Gen. Cond.
Cost of Work Travel and Living Expense							
Travel Expenses	X						
Truck Allowances / Mileage Reimbursement	X						
Per Diem's / Out of Town Living	X						
Relocation cost of staff	X						
Contract Documents/Construction Progress Documentation							
Project Management Software & Tools	X						Procure or similar program(s) will be purchased as COW
Scheduling		X					
Progress Photos / Construction Documentation	X						
Drawing Reproduction	X						
As-Built Surveying	X						
As-Built Documentation	X						

	Cost of Work (TBD)	General Conditions	Bond/Insurance Costs (% inc. in proposal)	Fee	Design Fees (NIC)	Owner Carried Costs	Comments
Utility Charges							
Electrical Aid to Construction (Power Company Charges)	X						
Temporary Electricity - Setup Charges (Trailer)	X						
Temporary Electricity - Trailer Consumption Charges		X					\$50,000 Allowance
Temporary Electricity - Building Consumption Charges		X					
Final Power / Commissioning Power		X					
Temporary Communication - Setup Charges (Trailer)		X					
Temporary Communication - Trailer Consumption Charges		X					For personnel inc. in Gen. Cond.
Mobile Phone		X					
Temporary Water - Setup Charges (Trailer)	X						
Temporary Water - Trailer Consumption Charges		X					
Temporary Water - Building Consumption Charges	X						
Final Water	X						
Temporary Fire Protection	X						
Field Office / Jobsite Setup		X					
Mobilization		X					
Office Trailer	X						
Tool/Storage Trailers		X					
Field Office Supplies		X					
Field Office Furnishings		X					
Field Office Postage & Shipping		X					
Computers		X					
Copier		X					
Fax Machine		X					
Printers		X					
Water / Ice / Cups	X						\$5,000 Allowance
Construction Fences & Gates		X					
Gravel Pad / Laydown	X						
Security	X						Includes one project sign per element
Project Signage		X					
Jobsite Signage / Site Directional Signage	X						
Safety							
First Aid Supplies	X						
Drug Testing	X						
Cleaning / Sanitation							
Temporary Toilets / Servicing	X						
Field Office Holding Tank / Servicing		X					
Progressive Clean Up	X						
Progressive Street Sweeping	X						
Final Cleaning		X					
Dumpsters	X						
Equipment		X					
Onsite transportation equipment for general conditions personnel							
Equipment	X						
Cranes & Hoisting	X						
Small Tools & Expendables	X						
Other Fees / Miscellaneous Expenses							
Temporary Building Protection	X						Can facilitate if desired
LEED Certification						X	
Development Plan Fees						X	
Airport Authority Review Fees						X	
City Inspection Fees						X	
Water Tap Fee						X	
Sewer Impact Fee						X	
Traffic Impact Fees / Parking or Lane Closure Permits						X	
DOT Fees							

	Cost of Work (TBD)	General Conditions	Bond/Insurance Costs (% inc. in proposal)	Fee	Design Fees (NIC)	Owner Carried Costs	Comments
<u>Profit / Insurance / Permits / Other Project Costs</u>							
Fee / Profit				X			
Charitable Contributions				X			
General Liability Insurance / Safety Administration			X				
Builders Risk Insurance			X				
Licenses				X			
Sales Tax	X						
Payment & Performance Bond			X				
Subcontracted Work	X						
Subcontractor Payment & Performance Bond/Default Insurance Program (1.3% of Sub Cost)	X						
Building Permits						X	
FDEP Permit Fees	X						
Animal Relocation Surveys or Services						X	
Sound Protection	X						
Allowances	X						
Unsuitable Soils / Unforeseen Conditions						X	
Project Owner Contingency						X	Scope changes, weather, unforeseen conditions, etc.
Project Construction Contingency	X						

EXHIBIT "F"

KEY PERSONNEL

Michael Tortorici

Tim Kozain

Bill Greenhut

Ryan Greenhut

Kevin Spellman

Randy Talcott

Travis Tauton

Hank Myers

Kelvin Enfinger, Sr.

Kelvin Enfinger, Jr.

Wesley Rutherford

EXHIBIT "G"

MONTHLY NORMAL INCLEMENT WEATHER DAYS

MONTH (2020)	INCLEMENT WEATHER DAYS
July	3
August	5
September	4
October	5
November	3
December	3

MONTH (2021)	INCLEMENT WEATHER DAYS
January	5
February	4
March	4
April	4
May	5
June	4
July	4
August	4
September	4
October	5
November	3
December	3

ATTACHMENT 1

PAYMENT & PERFORMANCE
BONDS

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, THAT WE _____ of the State of _____ and County of _____ hereinafter, know as the Principal, and _____, a corporation chartered and existing under the laws of the State of _____ and duly authorized to do business in the State of Florida as Surety, are held and firmly bound unto the City of Pensacola, Florida hereinafter know as the Owner, in the penal sum of _____ Dollars (\$_____) for the payment whereof we bind ourselves, our heirs, legal representatives, successors and assigns, jointly and severally, as provided herein.

WHEREAS, Principal has entered into a contract with Owner, dated _____, for _____ (list or describe contract).

This obligation is, however, subject to the following conditions:

The above bound Principal has entered into a contract with the Owner under which agrees to furnish all the labor and material and do all work necessary to construct all improvements described in these contract documents under certain terms, conditions, and stipulations and in accordance with the plans and specifications for the project, which are hereto attached and made part of this obligation.

Now should the above named Principal and all claimants, as defined in Section 255.05(1) of the Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract, or in any amendment or extension of or addition to said contract, and for the payment of reasonable attorneys fees, incurred by the claimant or claimants in suits on said bond, then the above obligation shall be void; otherwise, to remain in full force and effect.

And the Surety to this bond, for value received agrees that no change, extensions of time, alterations or additions to the terms of the contract or to the work to be performed hereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alterations or additions to the terms of the Contract or the work to the Plans and Specifications.

It is agreed that this bond is executed pursuant to and in accordance with the provisions of section 255.05 of the Florida Statutes, and is intended to be and shall be construed to be a bond on compliance with the requirements thereof. The payment bond required to exempt an Owner under this part shall be furnished by the Contractor in at least the amount of the original contract price before commencing the construction of the improvement under the direct contract. The bond shall be executed as surety by a surety insurer authorized to do business in this state and shall be conditioned that the Contractor shall promptly make payments for labor, services, and material to all lienors under the Contractor's direct contract. Any form of bond given by a Contractor conditioned to pay for labor, services, and material used to improve real property shall be deemed to include of this subsection.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

IN WITNESS WHEREOF, said Principal and Surety have thereunto affixed their hands and seals on this _____ day of _____, 20____, either in person or by agents fully authorized.

As to Principal:

Signed, sealed and delivered in
the presence of:

Principal

Witness

By: _____(L.S.)

Notary Public

State of _____

County of _____

As to Surety:

Signed, sealed and delivered in
the presence of:

Surety

Witness

By: _____(L.S.)

Notary Public

State of _____

County of _____

Approved as to form:

Owner's Attorney

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, THAT WE _____ of the State of _____ and County of _____ hereinafter, known as the Principal, and _____, a corporation chartered and existing under the laws of the State of _____ and duly authorized to do business in the State of Florida as Surety, are held and firmly bound unto the City of Pensacola, Florida hereinafter known as the Owner, in the penal sum of _____ Dollars (\$_____) for the payment whereof we bind ourselves, our heirs, legal representatives, successors and assigns, jointly and severally, as provided herein.

WHEREAS, Principal has entered into a contract with Owner, dated _____, for (list or describe contract.)

This obligation is, however, subject to the following conditions:

The above bound Principal has entered into a contract with the Owner under which agrees to furnish all the labor and material and do all work necessary to construct all improvements described in these contract documents under certain terms, conditions, and stipulations and in accordance with the plans and specifications for the project, which are hereto attached and made a part of this obligation.

NOW, THEREFORE, the conditions of this obligation are such that if the above bound Principal fails to faithfully and fully carry out and comply with the terms and conditions of said contract and complete the work therein specified, it shall be the duty of the Surety herein to assume the responsibility for the performance of the contract and to complete the work specified therein, including, but not limited to, obligations created by way of warranties and/or guarantees for workmanship and materials which warranty and/or guarantee may extend for a period of time beyond completion of said contract, and liquidated damages, and such alterations or additions as may be made therein or in the plans and specifications, and shall comply with all laws pertaining to said work, and shall comply with and perform any and all warranties and/or guarantees provided for in said contract. If the Principal faithfully and fully carries out and complies with the terms and conditions of said contract, then this obligation shall be void; otherwise it shall remain in full force and effect.

And the Surety to this bond, for value received agrees that no change, extensions of time, alterations or additions to the terms of the contract or to the work to be performed hereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alterations or additions to the terms of the Contract or the work to the Plans and Specifications.

It is agreed that this bond is executed pursuant to and in accordance with the provisions of section 255.05 of the Florida Statutes, and is intended to be a bond on compliance with the requirements thereof.

IN WITNESS WHEREOF, said Principal and Surety have thereunto affixed their hands and seals on this _____ day of _____, 20____, either in person or by agents fully authorized.

As to Principal:

Signed, sealed and delivered in
the presence of:

Principal

Witness

By: _____ (L.S.)

Notary Public

State of _____

County of _____

As to Surety:

Signed, sealed and delivered in
the presence of:

Surety

Witness

By: _____ (L.S.)

Notary Public

State of _____

County of _____

Approved as to form:

Owner's Attorney

ATTACHMENT 2

FEDERAL REQUIREMENTS FOR AIRPORT PROJECTS

ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade: 18.3%

Goals for female participation in each trade: 6.9%

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is City of Pensacola, Escambia County, Florida.

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Contractor must correct the breach. Owner may proceed with termination of the contract if the Contractor fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

BUY AMERICAN PREFERENCE

The Contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR TOTAL FACILITY

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States; or
 - b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- To faithfully comply with providing U.S. domestic products.
- To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

- ☐ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

- a) To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
- b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
- c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
- d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
- e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “facility”. The required documentation for a Type 3 waiver is:

- a) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).

- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c) Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

Type 4 Waiver – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a Type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

GENERAL CIVIL RIGHTS PROVISIONS

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceed \$150,000.

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

COPELAND "ANTI-KICKBACK" ACT

Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each

Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

DAVIS-BACON REQUIREMENTS

1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the

amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding.

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.* the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

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

contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

- (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT

Contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not

presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offerer /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§ 26.13) –

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

Prompt Payment (§26.29) – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the City of Pensacola. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Pensacola. This clause applies to both DBE and non-DBE subcontractors.

TEXTING WHEN DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving", (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce

safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

ENERGY CONSERVATION REQUIREMENTS

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201*et seq.*).

EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint

or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(9) The Contractor shall include this Equal Opportunity Cause in each nonexempt subcontract.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS**

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in

which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period and the Contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items, with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and

employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally), the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the

implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

The provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), are hereby incorporated herein by reference with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

CERTIFICATION REGARDING LOBBYING

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in

connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

PROHIBITION OF SEGREGATED FACILITIES

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

The requirements of 29 CFR Part 1910 are hereby incorporated herein by reference with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The

employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

PROCUREMENT OF RECOVERED MATERIALS

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
- 2) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

SEISMIC SAFETY

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- 1) The applicant represents that it is (☐) is not (☐) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is (☐) is not (☐) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

TERMINATION FOR CONVENIENCE

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.

4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

- 1) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- 2) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
- 3) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- 4) reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

TERMINATION FOR DEFAULT (CONSTRUCTION)

The Contractor shall be considered in default of their contract and such default will be considered as cause for the Owner to terminate the contract for any of the following reasons, if the Contractor:

- a. Fails to begin the work under the contract within the time specified in the Notice to Proceed, or
- b. Fails to perform the work or fails to provide sufficient workers, equipment and/or materials to assure completion of work in accordance with the terms of the contract, or
- c. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
- d. Discontinues the execution of the work, or
- e. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- g. Allows any final judgment to stand against the Contractor unsatisfied for a period of 10 days, or

h. Makes an assignment for the benefit of creditors, or

i. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

Should the Owner consider the Contractor in default of the contract for any reason above, the Owner shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Owner's intentions to terminate the contract.

If the Contractor or surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the Owner will, upon written notification from the RPR of the facts of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority without violating the contract, to take the execution of the work out of the hands of the Contractor. The Owner may appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the RPR will be required for the completion of said contract in an acceptable manner.

All costs and charges incurred by the Owner, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Owner the amount of such excess.

TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide

immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

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

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

ATTACHMENT 3

PROJECT TITAN GRANT REQUIREMENTS

PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS GOVERNMENT CONTRACTORS' LABOR RELATIONS ON FEDERAL AND FEDERALLY FUNDED CONSTRUCTION PROJECTS

Notwithstanding any contrary provision in the foregoing Contract, neither this Contract nor any subcontract or agreement entered into by the Construction Manager with respect to the Work shall (a) require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or (b) otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

PREHISTORIC OR HISTORIC ARTIFACTS

If prehistoric or historic artifacts, such as pottery or ceramics, projectile points, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the Construction Manager shall immediately cease all activities, involving subsurface disturbance in the immediate vicinity of the discovery. The Construction Manager shall immediately report such discovery verbally and in writing to the Construction Administrator, who shall notify Owner. Owner shall contact the Florida Division of Historical Resources ("FDHR") and the Economic Development Administration of the United States Department of Commerce ("EDA"), and the Construction Manager shall not resume project activities without written authorization from Owner. It is understood that Owner will not authorize resumption of project activities without written authorization from FDHR and EDA. In the event that unmarked human remains are encountered during permitted activities, the Construction Manager shall immediately stop all work and report such discovery verbally and in writing to the Construction Administrator. Owner shall notify the proper authorities in accordance with Section 872.05, Florida Statutes. The Construction Manager shall not resume project activities without written authorization from Owner. It is understood that Owner will not authorize resumption of project activities without written authorization from the district medical examiner having jurisdiction in Escambia County, Florida or the Florida State Archaeologist.

COMPLIANCE WITH LAW

The Construction Manager shall comply with, and shall require its subcontractors to comply with, all applicable statutes, regulations, executive orders, Office of Management and Budget circulars, applicable provisions of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (codified at 2 CFR part 200), and applicable provisions of the U. S. Department of Commerce Economic Development Administration *Standard Terms and Conditions for Construction Projects* (<https://www.eda.gov/files/tools/grantee-forms/EDA-Construction-Standard-Terms-and-Conditions.pdf>), including the following:

- (1) Davis-Bacon Act, as amended (40 U.S.C. 3141-3144, 3146, 3147; 42 U.S.C. 3212).
- (2) Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 3701-3708).
- (3) Historical and Archeological Data Preservation Act of 1974, as amended (16 U.S.C. 469a-1 *et seq.*).
- (4) Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*).
- (5) The Energy Conservation and Production Act (42 U.S.C. 6834 *et seq.*).
- (6) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and Department of Commerce implementing regulations published at 15 CFR part 8 ("Nondiscrimination in Federally Assisted Programs of the Department of Commerce – Effectuation of Title VI of the Civil Rights Act of 1964").
- (7) Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*).
- (8) Pub. L. No. 92-65, 42 U.S.C. § 3123, which proscribes discrimination on the basis of sex in EDA assistance provided under PWEDA; Pub. L. No. 94-369, 42 U.S.C. § 6709, which proscribes discrimination on the basis of sex under the Local Public Works Program; and the Department's implementing regulations at 15 CFR §§ 8.7 ("Cooperation, compliance reports and reviews and access to records") -8.15 ("Effect on other laws; supplementary instructions; coordination").
- (9) The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*) (ADA).
- (10) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and DOC implementing regulations published at 15 CFR part 8b ("Prohibition of Discrimination Against the Handicapped in Federally Assisted Programs Operated by the Department of Commerce"), which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance. For purposes of complying with the accessibility standards set forth in 15 CFR § 8b.18(c) ("New construction"), the Construction Manager must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act ("ADA") (28 CFR part 35 ("Nondiscrimination on the Basis of Disability in State and Local Government Services"); 75 Fed. Reg. 56164, as amended by 76 Fed. Reg. 13285) and Title III of the ADA (28 CFR part 36 ("Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities"); 75 Fed. Reg. 56236, as amended by 76 Fed. Reg. 13286). The revised regulations adopted new enforceable accessibility standards called the "2010 ADA Standards for Accessible Design" (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.
- (11) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) and DOC implementing regulations published at 15 CFR part 20 ("Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance").
- (12) Executive Order 11246 (30 Fed. Reg. 12319, 1965), as amended by Executive Orders 11375 (32 Fed. Reg. 14303, 1967) and 12086 (43 Fed. Reg. 46501, 1978), requiring Federally assisted construction contracts to include the nondiscrimination provisions of sections 202 and 203 of that

Executive Order and Department of Labor regulations implementing Executive Order 11246 (41 CFR § 60-1.4(b) ("Equal Opportunity Clause"), 1991).

- (13) Executive Order 13166 (August 11, 2000), "Improving Access to Services for Persons With Limited English Proficiency," requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency ("LEP"), and develop and implement a system to provide those services so that LEP persons can have meaningful access to them. The DOC issued policy guidance on March 24, 2003 ("Guidance to Federal Financial Assistance Recipients on the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons", 68 Fed. Reg. 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that Recipients provide meaningful access to their LEP applicants and beneficiaries.
- (14) The Construction Manager shall comply with subpart C (entitled "Responsibilities of Participants Regarding Transactions Doing Business with Other Persons") of the OMB guidance in 2 CFR part 180 "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)."
- (15) The Construction Manager shall include the following notice in each request for applications or bids for a subcontract:

"Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a DOC official) are subject to subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 CFR part 28, "New Restrictions on Lobbying." Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, Applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying-Lower Tier Covered Transactions," completed without modification."

- (16) The Construction Manager and this Contract are subject to 31 U.S.C. § 1352, as implemented at 15 CFR part 28 ("New Restrictions on Lobbying"). The Construction Manager shall submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Construction Manager's Form SF-LLL and the Forms SF-LLL of a subcontractor under subcontracts greater than \$100,000 shall be submitted to Owner within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Further, the Construction Manager shall include the following provision in each subcontract greater than \$100,000:

"The Subcontractor and this Subcontract are subject to 31 U.S.C. § 1352, as implemented at 15 CFR part 28 ("New Restrictions on Lobbying"). The Subcontractor shall submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted to the Construction Manager within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed."

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The Construction Manager shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (28 CFR Part 5).

PILOT PROGRAM FOR ENHANCEMENT OF EMPLOYEE WHISTLEBLOWER PROTECTIONS

In accordance with 41 U.S.C. § 4712, the Construction Manager agrees that an employee of the Construction Manager or of any subcontractor under the Construction Manager may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award or subaward or contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority related to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award or subaward or contract under a Federal award or subaward. These persons or bodies include: a. A Member of Congress or a representative of a committee of Congress. b. An Inspector General. c. The Government Accountability Office. d. A Federal employee responsible for contract or grant oversight or management at the relevant agency. e. An authorized official of the Department of Justice or other law enforcement agency. f. A court or grand jury. g. A management official or other employee of the City of Pensacola, the Construction Manager, or any subcontractor under the Construction Manager who has the responsibility to investigate, discover, or address misconduct. The Construction Manager shall inform its employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce, and shall require each of its subcontractors to likewise inform the subcontractor's employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

SUBCONTRACT WITH A FEDERAL AGENCY

The Construction Manager shall not subcontract any part of the Work to any agency or employee of the U. S. Department of Commerce or any other Federal department, agency, or instrumentality without the prior written approval of the Economic Development Agency of the U. S. Department of Commerce.

INCREASING SEAT BELT USE IN THE UNITED STATES

Pursuant to Executive Order 13043, the Construction Manager is encouraged to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally-owned vehicles.

CLEAN AIR ACT; CLEAN WATER ACT

The Construction Manager shall comply with applicable standards, orders, and requirements issued under section 306 of the Clean Air Act (42 U.S.C. section 7606), section 508 of the Clean Water Act (33 U.S.C. section 1368), Executive Order 11738, Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans, and Environmental Protection Agency regulations at 48 C.F.R. part 15.

INSPECTION BY EDA REPRESENTATIVES

The authorized representatives and agents of the U.S. Economic Development Agency (EDA) shall be permitted to inspect all work, materials, payrolls, personnel records, invoices of materials, and other relevant data and records.

EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS

- (a) The Owner, U.S. Economic Development Agency (EDA), or the Comptroller General of the United States, or any of their duly authorized representatives shall, generally until three years after final payment under this contract, have access to and the right to examine any of the Construction Manager's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Construction Manager agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders that do not exceed \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Owner, EDA, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

CONTRACTOR'S TITLE TO MATERIAL

No materials, supplies, or equipment for the Work shall be purchased by the Construction Manager or by any subcontractor that is subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Construction Manager warrants and guarantees that it shall at all times have good title to all work, materials, and equipment used by the Construction Manager in the Work, free and clear of all liens, claims, or encumbrances.

INSPECTION AND TESTING OF MATERIALS

All materials and equipment used in the completion of the Work shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by, the Owner. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses.

"OR EQUAL" CLAUSE

Whenever a material, article, or piece of equipment is identified in the Contract Documents by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard. Any material, article, or equipment of other manufacturers and vendors that will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Design Professional, of equal substance and function. However, such substitution material, article, or equipment shall not be purchased or installed by the Construction Manager without the Design Professional's written approval.

PATENT FEES AND ROYALTIES

(a) Construction Manager shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Design Professional, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner or the Design Professional, as the case may be, in the Contract Documents.

(b) To the fullest extent permitted by Laws and Regulations, the Construction Manager shall indemnify and hold harmless the Owner and the Design Professional, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

CONTRACTING WITH SMALL, MINORITY AND WOMEN'S BUSINESSES

The Construction Manager shall take affirmative steps to assure that small, minority, and women's businesses are used when possible as sources of supplies, equipment, construction and services. Such affirmative steps shall consist of:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (4) Establishing delivery schedules, where the requirements of the Contract permit, which encourage participation by small and minority businesses and women's business enterprises;
- (5) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies; and
- (6) Requiring each party to a subcontract to take the affirmative steps of this section.

The Construction Manager is encouraged to procure goods and services from Labor Surplus Area firms.

HEALTH, SAFETY, AND ACCIDENT PREVENTION

- (a) In performing this Contract, the Construction Manager shall:
 - (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
 - (2) Protect the lives, health, and safety of other persons;
 - (3) Prevent damage to property, materials, supplies, and equipment; and
 - (4) Avoid work interruptions.

- (b) For these purposes, the Construction Manager shall:
 - (1) Comply with regulations and standards issued by the Secretary of Labor at 29 C.F.R. part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701 3708); and
 - (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.
- (c) The Construction Manager shall maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 C.F.R. part 1904.
- (d) The Owner shall notify the Construction Manager of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Construction Manager or the Construction Manager's representative at the site of the Work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Construction Manager shall immediately take corrective action. If the Construction Manager fails or refuses to take corrective action promptly, the Owner may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Construction Manager shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.
- (e) The Construction Manager shall be responsible for its subcontractors' compliance with the provisions of this clause. The Construction Manager shall take such action with respect to any subcontract as EDA, or the Secretary of Labor shall direct as a means of enforcing such provisions.

CONFLICT OF INTEREST AND OTHER PROHIBITED INTERESTS

- (a) The Construction Manager may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the Contract Documents has a corporate or financial affiliation with the supplier or manufacturer.
- (b) If the Owner finds after a notice and hearing that the Construction Manager, or any of the Construction Manager's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the Owner or EDA in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, the Owner may, by written notice to the Construction Manager, terminate this Contract. The Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which the Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.
- (c) In the event this Contract is terminated as provided in paragraph (e) of this section, the Owner may pursue the same remedies against the Construction Manager as it could

pursue in the event of a breach of this Contract by the Construction Manager. As a penalty, in addition to any other damages to which it may be entitled by law, the Owner may pursue exemplary damages in an amount (as determined by the Owner) which shall not be less than three nor more than ten times the costs the Construction Manager incurs in providing any such gratuities to any such officer or employee.

RESTRICTIONS ON LOBBYING

- (a) This Contract, or subcontract is subject to section 319 of Public Law 101-121, which added section 1352, regarding lobbying restrictions, to chapter 13 of title 31 of the United States Code. The new section is explained in the common rule, 15 C.F.R. part 28 (55 FR 6736-6748, February 26, 1990). Each bidder under this Contract or subcontract is generally prohibited from using federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this EDA Award.
- (b) Contract Clause Threshold: This Contract Clause regarding lobbying must be included in each bid for a contract or subcontract exceeding \$1 00,000 of federal funds at any tier under the EDA Award.
- (c) Certification and Disclosure: Each bidder of a contract or subcontract exceeding \$100,000 of federal funds at any tier under the federal Award must file Form CD-512, *Certification Regarding Lobbying*, and, if applicable, Standard Form-LLL, *Disclosure of Lobbying Activities*, regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the Construction Manager or subcontractor at the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.
- (d) Continuing Disclosure Requirement: Each Construction Manager or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.
- (e) Indian Tribes, Tribal Organizations, or Other Indian Organizations: Indian tribes, tribal organizations, or any other Indian organizations, including Alaskan Native organizations, are excluded from the above lobbying restrictions and reporting requirements, but only with respect to expenditures that are by such tribes or organizations for lobbying activities permitted by other federal law. An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide EDA with the citation of the provision or provisions of federal law upon which it relies to conduct lobbying activities that would otherwise be subject to the prohibitions in and to the Certification and Disclosure requirements of section 319 of Public Law No. 101-121, preferably through an attorney's opinion. Note,

also, that a non-Indian subrecipient, Construction Manager, or subcontractor under an award to an Indian tribe, for example, is subject to the restrictions and reporting requirements.

CLEAN AIR AND WATER

(a) Definition. "Facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by the Construction Manager or any subcontractor, used in the performance of the Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the United States Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

(b) In compliance with regulations issued by the EPA, 2 C.F.R. part 1532, pursuant to the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*); and Executive Order 11738, the Construction Manager agrees to:

- (1) Not utilize any facility in the performance of this contract or any subcontract which is listed on the EPA List of Violating Facilities pursuant to 2 C.F.R. part 1532 for the duration of time that the facility remains on the list;
- (2) Promptly notify the Owner if a facility the Construction Manager intends to use in the performance of this contract is on the EPA List of Violating Facilities or the Construction Manager knows that it has been recommended to be placed on the List;
- (3) Comply with all requirements of the Clean Air Act and the Federal Water Pollution Control Act, including the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all applicable clean air and clean water standards; and
- (4) Include or cause to be included the provisions of this clause in every subcontract and take such action as EDA may direct as a means of enforcing such provisions.

ENVIRONMENTAL REQUIREMENTS

When constructing a Project involving trenching and/or other related earth excavations, the Construction Manager shall comply with the following environmental constraints:

- (1) Wetlands. When disposing of excess, spoil, or other construction materials on public or private property, the Construction Manager shall not fill in or otherwise convert wetlands.

(2) Floodplains. When disposing of excess, spoil, or other construction materials on public or private property, the Construction Manager shall not fill in or otherwise convert 100 year floodplain areas delineated on the latest Federal Emergency Management Agency (FEMA) Floodplain Maps, or other appropriate maps, i.e., alluvial soils on Natural Resource Conservation Service (NRCS) Soil Survey Maps.

(4) Endangered Species. The Construction Manager shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of the Construction Manager, the Construction Manager will immediately report this evidence to the Owner and a representative of EDA. Construction shall be temporarily halted pending the notification process and further directions issued by EDA after consultation with the U.S. Fish and Wildlife Service.

EDA PROJECT SIGN

The Construction Manager shall supply, erect and maintain a Project sign according to the specifications provided by EDA. To the extent practical, the sign should be a free standing sign. Project signs shall not be located on public highway rights of way. Location and height of signs will be coordinated with the local agency responsible for highway or street safety in the Project area, if any possibility exists for obstructing vehicular traffic line of sight. Whenever the EDA site sign specifications conflict with State law or local ordinances, the EDA Regional Director will permit such conflicting specifications to be modified so as to comply with State law or local ordinance. The cost of such sign shall be included in the Cost of the Work.

INDEMNIFICATION (FLORIDA DOT-REQUIRED FORM)

To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless Owner and the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Construction Manager and persons employed or utilized by the Construction Manager in the performance of this Contract.

This indemnification shall survive the termination of this Contract. Nothing contained in this provision is intended to nor shall it constitute a waiver of the State of Florida and Owner's sovereign immunity.

THE CONSTRUCTION MANAGER SHALL REQUIRE ALL SUBCONTRACTORS AND MATERIAL SUPPLIERS PERFORMING OR PROVIDING ANY PART OF THE WORK TO PROVIDE SUBSTANTIALLY THE SAME INDEMNIFICATION TO OWNER AND THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION.

INDEMNIFICATION (FLORIDA DEO-REQUIRED FORM)

The Construction Manager shall indemnify, defend, save and hold harmless the Florida Department of Economic Opportunity and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the Construction Manager, its officers, agents, employees, subcontractors, and suppliers.

THE CONSTRUCTION MANAGER SHALL REQUIRE ALL SUBCONTRACTORS AND MATERIAL SUPPLIERS PERFORMING OR PROVIDING ANY PART OF THE WORK TO PROVIDE SUBSTANTIALLY THE SAME INDEMNIFICATION TO THE STATE OF FLORIDA, DEPARTMENT OF ECONOMIC OPPORTUNITY.

COMMERCIAL GENERAL LIABILITY INSURANCE

The State of Florida, Department of Transportation, and the State of Florida, Department of Economic Opportunity, shall be included as additional insureds on the commercial general liability insurance required by Section 27.3.1 of this Contract.



BRAS&GO-01

NKARAM1

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/25/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lakeview Risk Partners, LLC 2927 2nd Avenue South Birmingham, AL 35233	CONTACT NAME: Nicole Karamichael	
	PHONE (A/C, No, Ext): (205) 879-1945	FAX (A/C, No): (205) 879-1946
INSURED Brasfield & Gorrie, L.L.C. P.O. Box 10383 Birmingham, AL 35202	E-MAIL ADDRESS: nkaramichael@lakeviewrisk.com	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: The Travelers Indemnity Company	NAIC # 25658
	INSURER B: Travelers Property Casualty Co of America	25674
	INSURER C: *See Attachment for Schedule of Companies	
	INSURER D: The Travelers Indemnity Company of America	25666
	INSURER E: Steadfast Insurance Company	26387
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual <input checked="" type="checkbox"/> Includes X, C, U GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		VTC2K-CO-7852B663-IND-19	7/1/2019	7/1/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 50,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		VTC2J-CAP-5449B876-TIL-19	7/1/2019	7/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$		SEE ATTACHED SCHEDULE	7/1/2019	7/1/2020	EACH OCCURRENCE \$ 20,000,000 AGGREGATE \$ 20,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N N/A	VTC2H-UB-3D450508-TIA-19	7/1/2019	7/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	Professional Liab.		EOC 9138954-13	7/1/2019	7/1/2020	Each Claim/Aggregate \$ 10,000,000
B	Riggers Legal Liab		QT-660-8740M17A-TIL-19	7/1/2019	7/1/2020	Per Occurrence \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: VT Mobile Aerospace Engineering, Inc., Project Titan Element 1 MRO Facilities at Pensacola International Airport, 2430 Airport Blvd., Pensacola, FL 32504

As required by the "Construction Manager at Risk Contract" between the City of Pensacola ("Owner") and Brasfield & Gorrie, L.L.C. ("Construction Manager at Risk"), the City of Pensacola and VT Mobile Aerospace Engineering, Inc. (where required by contract) shall be listed as an Additional Insured on a primary basis on the General Liability, Auto Liability and Umbrella Liability policies shown. Thirty (30) Days' Notice of Cancellation, except ten (10) days Notice for Nonpayment, shall be provided to the City of Pensacola as required by the referenced contract. All coverages shown shall be considered primary with respect to Brasfield & Gorrie, L.L.C.

CERTIFICATE HOLDER

CANCELLATION

City of Pensacola 222 West Main Street Pensacola, FL 32502	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE



LAKEVIEW

RISK PARTNERS

**Policy Period 07/01/2019 to 07/01/2020 - Umbrella Layers
Brasfield & Gorrie, LLC**

Travelers Property Casualty Company of America
VTSMJ-CUP 5800B505-TIL-19
\$10,000,000

Continental Insurance Company
FFX6011412336
\$10,000,000 X \$10,000,000

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – AUTOMATIC STATUS IF REQUIRED BY WRITTEN CONTRACT (CONTRACTORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that:

- a. You agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part; and
- b. Has not been added as an additional insured for the same project by attachment of an endorsement under this Coverage Part which includes such person or organization in the endorsement's schedule;

is an insured, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. Only as described in Paragraph (1), (2) or (3) below, whichever applies:

(1) If the "written contract requiring insurance" specifically requires you to provide additional insured coverage to that person or organization by the use of:

- (a) The Additional Insured – Owners, Lessees or Contractors – (Form B) endorsement CG 20 10 11 85; or
- (b) Either or both of the following: the Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 10 01, or the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 10 01;

the person or organization is an additional insured only if the injury or damage arises out of "your work" to which the "written contract requiring insurance" applies;

- (2) If the "written contract requiring insurance" specifically requires you to provide additional insured coverage to that person or organization by the use of:

(a) The Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization endorsement CG 20 10 07 04 or CG 20 10 04 13, the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 07 04 or CG 20 37 04 13, or both of such endorsements with either of those edition dates; or

(b) Either or both of the following: the Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10, or the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37, without an edition date of such endorsement specified;

the person or organization is an additional insured only if the injury or damage is caused, in whole or in part, by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies; or

- (3) If neither Paragraph (1) nor (2) above applies:

(a) The person or organization is an additional insured only if, and to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies; and

(b) The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

COMMERCIAL GENERAL LIABILITY

2. The insurance provided to the additional insured by this endorsement is limited as follows:
 - a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured will be limited to such minimum required limits of liability. For the purposes of determining whether this limitation applies, the minimum limits of liability required by the "written contract requiring insurance" will be considered to include the minimum limits of liability of any Umbrella or Excess liability coverage required for the additional insured by that "written contract requiring insurance". This endorsement will not increase the limits of insurance described in Section III – Limits Of Insurance.
 - b. The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
 - (2) Supervisory, inspection, architectural or engineering activities.
 - c. The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured during the policy period.
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured under which that person or organization qualifies as a named insured, and we will not share with that other insurance. But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured, or is any other insured that does not qualify as a named insured, under such other insurance.
4. As a condition of coverage provided to the additional insured by this endorsement:
 - a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
 - b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
 - c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
 - d. The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insured by this endorsement is primary to other insurance available to the additional insured which covers that person or organization as a named insured as described in Paragraph 3. above.
5. The following is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or or-

COMMERCIAL GENERAL LIABILITY

ganization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed, during the policy period and:

- a. After the signing and execution of the contract or agreement by you; and
- b. While that part of the contract or agreement is in effect.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

PROVISIONS

- A. The following is added to Paragraph c. in A. 1., Who Is An Insured, of SECTION II – LIABILITY COVERAGE:**

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

- B. The following is added to Paragraph 5., Other Insurance, in B. General Conditions of SECTION IV – BUSINESS AUTO CONDITIONS:**

Regardless of the provisions of paragraph a. and paragraph d. of this part 5. **Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

COMMERCIAL GENERAL LIABILITY

POLICY NUMBER: VTSMJ-CUP-5800B505-TIL-19

ISSUE DATE:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT - OTHER INSURANCE - PERSONS OR ORGANIZATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY (UMBRELLA) INSURANCE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDMENT - OTHER INSURANCE - PERSONS OR ORGANIZATIONS FOR WHOM YOU HAVE AGREED
IN A WRITTEN CONTRACT TO PROVIDE INSURANCE**

**THE FOLLOWING IS ADDED TO PARAGRAPH 10. OTHER INSURANCE OF
SECTION IV CONDITIONS:**

**HOWEVER, FOR ANY PERSON OR ORGANIZATION THAT QUALIFIES AS AN INSURED UNDER
PARAGRAPH 2. F. OF SECTION II - WHO IS AN INSURED, IF THE WRITTEN CONTRACT IN
WHICH YOU HAVE AGREED TO PROVIDE INSURANCE FOR THAT PERSON OR ORGANIZATION
SPECIFICALLY REQUIRES THAT THIS INSURANCE APPLY ON A PRIMARY OR A PRIMARY AND
NON-CONTRIBUTORY BASIS, THIS INSURANCE WILL APPLY AS IF OTHER INSURANCE
AVAILABLE TO THAT PERSON OR ORGANIZATION WHICH COVERS THAT PERSON OR
ORGANIZATION AS A NAMED INSURED DOES NOT EXIST, AND WE WILL NOT SHARE
WITH THAT OTHER INSURANCE. BUT, THIS INSURANCE STILL IS EXCESS OVER ANY OTHER
VALID AND COLLECTIBLE INSURANCE, WHETHER SUCH INSURANCE IS STATED TO BE
PRIMARY, CONTRIBUTING, EXCESS, CONTINGENT OR OTHERWISE, THAT IS
AVAILABLE TO THAT PERSON OR ORGANIZATION WHEN THAT PERSON OR ORGANIZATION
IS AN ADDITIONAL INSURED UNDER SUCH OTHER INSURANCE.**

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POLICY NUMBER: VTC2K -CO -7852B663-IND-19

ISSUE DATE:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED ENTITY - EARLIER NOTICE OF
CANCELLATION/NONRENEWAL PROVIDED BY US**

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION:

Number of Days Notice: 30

WHEN WE DO NOT RENEW (Nonrenewal):

Number of Days Notice: 30

NAME: SEE ENDORSEMENT IL T8 03

ADDRESS: SEE ENDORSEMENT IL T8 03

- A. For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation, as provided in the CONDITIONS Section of this insurance, or as amended by any applicable state cancellation endorsement applicable to this insurance, is increased to the number of days shown in the SCHEDULE above.
- B. For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of When We Do Not Renew (Nonrenewal), as provided in the CONDITIONS Section of this insurance, or as amended by any applicable state When We Do Not Renew (Nonrenewal) endorsement applicable to this insurance, is increased to the number of days shown in the SCHEDULE above.
- C. We will mail notice of cancellation or nonrenewal or material limitation of those coverage forms to the person or organization shown in the schedule above. We will mail the notice at least the Number of Days indicated above before the effective date to our action.

POLICY NUMBER: VTC2K-CO-7852B663-IND-19

GENERAL PURPOSE ENDORSEMENT

DESIGNATED ENTITY - EARLIER NOTICE OF
CANCELLATION/NONRENEWAL PROVIDED BY US

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

Endorsement IL T3 54 03 98, DESIGNATED ENTITY - EARLIER NOTICE OF
CANCELLATION/NONRENEWAL PROVIDED BY US, is amended to read as follows:

SCHEDULE

NAME: Any person or organization that is a certificate holder of a
certificate of insurance issued for you that:

1. Refers to this policy and attaches a copy of this endorsement;
and
2. Is in effect, and is on file at the office of your agent or broker
for this policy, at the time of the cancellation or nonrenewal.

ADDRESS: The address shown for that person or organization
in that certificate of insurance.

POLICY NUMBER: VTC2J-CAP-5449B876-TIL-19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED ENTITY – EARLIER NOTICE OF
CANCELLATION/NONRENEWAL PROVIDED BY US**

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION:

Number of Days Notice: 30

WHEN WE DO NOT RENEW (Nonrenewal):

Number of Days Notice: 30

NAME: SEE IL T8 05 07 18

ADDRESS: SEE IL T8 05 07 18

- A. For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation, as provided in the CONDITIONS Section of this insurance, or as amended by any applicable state cancellation endorsement applicable to this insurance, is increased to the number of days shown in the SCHEDULE above.
- B. For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of When We Do Not Renew (Nonrenewal), as provided in the CONDITIONS Section of this insurance, or as amended by any applicable state When We Do Not Renew (Nonrenewal) endorsement applicable to this insurance, is increased to the number of days shown in the SCHEDULE above.
- C. We will mail notice of cancellation or nonrenewal or material limitation of those coverage forms to the person or organization shown in the schedule above. We will mail the notice at least the Number of Days indicated above before the effective date to our action.

COMMERCIAL AUTO POLICY

ENDORSEMENT - IL T8 05 07 18

POLICY NUMBER: VTC2J-CAP-5449B876-TIL-19

DESIGNATED ENTITY - EARLIER NOTICE OF CANCELLATION

IT IS AGREED THAT:

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE OF IL T3 54 03 98, DESIGNATED ENTITY - EARLIER NOTICE OF CANCELLATION/NONRENEWAL PROVIDED BY US, IS AMENDED AS FOLLOWS:

- 1. NAME: ANY PERSON OR ORGANIZATION THAT IS A CERTIFICATE HOLDER OF A CERTIFICATE OF INSURANCE ISSUED FOR YOU THAT:**
 - 1. REFERS TO THIS POLICY AND ATTACHES A COPY OF THIS ENDORSEMENT; AND**
 - 2. IS IN EFFECT, AND IS ON FILE AT THE OFFICE OF YOUR AGENT OR BROKER FOR THIS POLICY, AT THE TIME OF THE CANCELLATION OR NONRENEWAL.**

ADDRESS: THE ADDRESS SHOWN FOR THAT PERSON OR ORGANIZATION IN THAT CERTIFICATE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED ENTITY - EARLIER NOTICE OF
CANCELLATION/NONRENEWAL PROVIDED BY US**

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION:

Number of Days Notice: 30

WHEN WE DO NOT RENEW (Nonrenewal):

Number of Days Notice: 30

NAME: SEE ENDT IL T8 02

ADDRESS: SEE ENDT IL T8 02

- A. For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation, as provided in the CONDITIONS Section of this insurance, or as amended by any applicable state cancellation endorsement applicable to this insurance, is increased to the number of days shown in the SCHEDULE above.
- B. For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of When We Do Not Renew (Nonrenewal), as provided in the CONDITIONS Section of this insurance, or as amended by any applicable state When We Do Not Renew (Nonrenewal) endorsement applicable to this insurance, is increased to the number of days shown in the SCHEDULE above.
- C. We will mail notice of cancellation or nonrenewal or material limitation of those coverage forms to the person or organization shown in the schedule above. We will mail the notice at least the Number of Days indicated above before the effective date to our action.

POLICY NUMBER: VTSMJ-CUP-5800B505-TIL-19

ISSUE DATE:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED ENTITY-EARLIER NOTICE OF CANCELLATION/NONRENEWAL

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY (UMBRELLA) INSURANCE

DESIGNATED ENTITY-EARLIER NOTICE OF CANCELLATION/NONRENEWAL PROVIDED BY US, IL T3 54 03 98, NAME AND ADDRESS SCHEDULE IS AMENDED TO READ:

NAME: ANY PERSON OR ORGANIZATION THAT IS A CERTIFICATE HOLDER OF A CERTIFICATE OF INSURANCE ISSUED FOR YOU THAT:

1. REFERS TO THIS POLICY AND ATTACHES A COPY OF THIS ENDORSEMENT; AND
2. IS IN EFFECT, AND IS ON FILE AT THE OFFICE OF YOUR AGENT OR BROKER FOR THIS POLICY, AT THE TIME OF THE CANCELLATION OR NONRENEWAL.

ADDRESS: THE ADDRESS SHOWN FOR THAT PERSON OR ORGANIZATION IN THAT CERTIFICATE.



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 99 06 R3 (00)**

POLICY NUMBER: VTC2H-UB-3D450508-TIA-19

**NOTICE OF CANCELLATION
TO DESIGNATED PERSONS OR ORGANIZATIONS**

The following is added to **PART SIX – CONDITIONS**:

Notice Of Cancellation To Designated Persons Or Organizations

If we cancel this policy for any reason other than non-payment of premium by you, we will provide notice of such cancellation to each person or organization designated in the Schedule below. We will mail or deliver such notice to each person or organization at its listed address at least the number of days shown for that person or organization before the cancellation is to take effect.

You are responsible for providing us with the information necessary to accurately complete the Schedule below. If we cannot mail or deliver a notice of cancellation to a designated person or organization because the name or address of such designated person or organization provided to us is not accurate or complete, we have no responsibility to mail, deliver or otherwise notify such designated person or organization of the cancellation.

SCHEDULE

Name and Address of Designated Persons or Organizations:

**Number of
Days Notice**

**NAME: ANY PERSON OR ORGANIZATION THAT IS A CERTIFICATE
HOLDER OF A CERTIFICATE OF INSURANCE ISSUED FOR YOU THAT:**

90

**A) REFERS TO THIS POLICY AND ATTACHES A COPY OF THIS
ENDORSEMENT AND**

**B) IS IN EFFECT, AND IS ON FILE AT THE OFFICE OF YOUR AGENT
OR BROKER FOR THIS POLICY, AT THE TIME OF CANCELLATION**

**ADDRESS: THE ADDRESS SHOWN FOR THAT PERSON OR ORGANIZATION
IN THAT CERTIFICATE OF INSURANCE**

SAM Search Results
List of records matching your search for :

Search Term : BRASFIELD & GORRIE, L.L.C.*
Record Status: Active

ENTITY	BRASFIELD & GORRIE, L.L.C.	Status: Active
DUNS: 005074302	+4:	CAGE Code: 0L5R0 DoDAAC:
Expiration Date: 08/11/2020	Has Active Exclusion?: No	Debt Subject to Offset?: No
Address: 3021 7TH AVE S		
City: BIRMINGHAM	State/Province: ALABAMA	
ZIP Code: 35233-2939	Country: UNITED STATES	

Detail by Entity Name

Foreign Limited Liability Company
BRASFIELD & GORRIE, L.L.C.

Filing Information

Document Number M97000000707
FEI/EIN Number 72-1400223
Date Filed 10/27/1997
State DE
Status ACTIVE

Principal Address

3021 7th Avenue South
Birmingham, AL 35233

Changed: 04/06/2018

Mailing Address

3021 7th Avenue South
Birmingham, AL 35233

Changed: 04/06/2018

Registered Agent Name & Address

CT CORPORATION SYSTEM
1200 SOUTH PINE ISLAND ROAD
PLANTATION, FL 33324

Authorized Person(s) Detail

Name & Address

Title Member

BRASFIELD & GORRIE, L.P.
3021 7th Avenue South
Birmingham, AL 35233

Title CFO

Freeman, Randall J.
3021 7th Avenue South
Birmingham, AL 35233

Title CEO

Gorrie, M James
3021 7th Avenue South
Birmingham, AL 35233

Title Secretary

Grizzle, Charles L., Jr.
3021 7th Avenue South
Birmingham, AL 35233