



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 MRO FACILITIES
AT PENSACOLA INTERNATIONAL AIRPORT**

THIS CONTRACT is made and entered into this _____ day of January, 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 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. 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. Certain deliverables required from the Construction Manager, such as schedules and others may, in addition to being listed in this Contract, be included in the contract with Design Professional. The Construction Manager hereby acknowledges receipt of such Design Professional contract, and agrees that the Construction Manager shall comply with all pertinent provisions listed in Design Professional contract.

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 Cost 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 Cost for Element 1 is the fixed 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. 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 three sets 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, inclusive, 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. conceptual design drawings, preliminary design drawings, detailed design drawings at 60%, 90% or 100% and schematic, design development, construction 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, the Construction Manager shall not be 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.
- 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, 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 serve 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 Design
2. Early Release Packages
3. 60% Design Documents / Preliminary GMP
4. 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 ensure that Subcontractors they propose 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 is actual costs 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.

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 Within fourteen (14) days after Owner's issuance to Construction Manager of the Notice to Proceed with pre-construction services, the Construction Manager shall provide a rough order of magnitude (ROM) estimate of costs based on the information then available to Construction Manager, including the Basis of Design for Element 1.
- 2.7.5a 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 60% documents, the 95% documents, and the 100% (Issued for Construction) documents in both 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 American Institute of Architects, the American Consulting Engineers Council and the American Society of Civil Engineers and approved by the City shall be utilized. The Construction Manager understands that the Design Professional is obligated to provide AutoCad 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 \$5,000.00) 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 \$20,000 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 Two Hundred Thirty-Two Thousand and 00/100 (\$232,000.00) Dollars.

Owner may withhold payment to such extent reasonably necessary as a result of (a) third party claims arising out of the 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. \$63,000 upon submission of cost estimate at completion of Concept Phase;
2. \$21,000 upon submission of cost estimate at completion of Early Release Phase;
3. \$63,000 upon submission of preliminary GMP at completion of 60% Design Phase; and
4. \$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. 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.

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. 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 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.

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, 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.

- 8.1.5 City 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 Extension of the Contract Time shall be the Contractor's sole remedy for any inclement weather delay as well as any other delay 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 \$ _____ 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 \$1,500.00 for each day the Contract Time for the Work is delayed due to a Compensable Excusable Delay.

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 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 following employees of Construction Manager: to-wit: _____, 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) travel expenses must be approved in advance by the Construction Administrator, such approval not to be unreasonably withheld; (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 "___" 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:
 - .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.

10.5.4 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 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 Prior to execution of the pertinent GMP Amendment, 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 for any reason, 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:
 - (a) Keep and maintain public records required by the City to perform the service.

- (b) 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.
- (c) 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.
- (d) 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 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 ensure 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:
- (a) 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
 - (b) 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, as a result of a default by the Construction Manager under this Contract, Owner may be required to re-pay 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. All such funds are hereby 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, does not proceed in accordance therewith, 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

- 24.1 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 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 per accident, combined single limit for liability must be provided, plus additional umbrella insurance coverage of \$15,000,000. 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 the broadest coverage available at the time of placement.

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 equal to 10% of the Amount of Insurance of the completed value of the work described in this Contract for materials and equipment stored off the construction site, in transit or delivery, including loading and unloading. 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 Installation Floater will be provided by the Contractor in a form acceptable to Owner. The amount of Insurance is to be 100% of the completed value of the pre-engineered metal hangar building that is part of the Work. Owner and the Tenant shall be named as Additional Insureds.

27.3.4 Environmental Impairment 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 deductible up to \$25,000.

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. 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

27.4 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 and/or restriction. If any of the insurance coverages will expire prior to the completion of the Project, copies of renewal policies 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 their 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. 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. Each party shall pay its 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.

- 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".

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.

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

OWNER:

Attest:

CITY OF PENSACOLA,
a Florida municipal corporation

Ericka L. Burnett, City Clerk

By: _____
Grover C. Robinson, IV, Mayor

[AFFIX CITY SEAL]

Approved as to Content:

Approved as to Form:

Daniel E. Flynn, Airport Director

Susan A. Woolf
City Attorney

CONSTRUCTION MANAGER:

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

Attest:

Printed Name: _____
Title _____

By: _____
Printed Name: _____
Title: _____

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

Included In GMP

Item#	(Description	Cost
GC-1.0 On-Site Offices		
GC-1.1		
GC-1.2		
GC-1.3		
GC-1.4		
GC-1.5		
GC-1.6		
GC-1.7		
GC-1.8		
GC-1.9		
GC-1.10		
GC-1.11		
GC-1.12		
GC-1.13		
GC-1.14		
GC-1.15		
GC-1.16		
GC-1.17		
GC-1.18		
GC-1.19		
GC-1.20		
GC-1.21		
GC-1.22		
GC-1.23		
	Subtotal:	
GC-2.0 Temporary Utilities		
GC-2.1		
GC-3.0 Temporary Construction Services		
GC-3.1		
GC-3.2		
GC-3.3		
GC-3.4		
GC-3.5		
GC-3.6	Cont.	
GC-3.7		
GC-3.8		
GC-3.9		
GC-3.10		

EXHIBIT "C"

CONSTRUCTION MANAGER'S GENERAL CONDITIONS

GC-4.0 Clean-Up

GC-4.1		
GC-4.2		
GC-4.3		
GC-4.4		

GC-5.0 Safety

GC-5.1		
GC-5.2		
GC-5.3		
GC-5.4		
GC-5.5		

GC-6.0 Testing & Inspection

GC-6.1		
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GC-7.0 Fees & Permits

GC-7.1		
GC-7.2		
GC-7.3		
GC-7.4		

GC-8.0 Equipment

GC-8.1		
GC-8.2		
GC-8.3		
GC-8.4		
GC-8.5		
GC-8.6		

Subtotal: Total General Conditions:

\$
\$

Notes:

All General Condition items are to be reimbursed at cost and include cost of material, labor, fringe and sales tax where applicable.

The individual line items of General Conditions are estimated values and the total cost of General Conditions is included in the GMP.

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

EXHIBIT "F"
KEY PERSONNEL

EXHIBIT "G"

INCLEMENT WEATHER DAYS

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