

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

THIS AGREEMENT, is made by and between MARION COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter, "Owner," and Dinkins Construction LLC, a Florida corporation, and Licensed to Conduct Business in the State of Florida, hereinafter, "CM AT RISK."

WITNESSETH:

WHEREAS, on or about December 1, 2023, the Owner issued its Solicitation No. 24Q-061; and

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

WHEREAS, on March 4, 2024, the Owner selected and designated Dinkins Construction LLC to be the CM AT RISK for the State Attorney 4th Floor Build-Out & Courtroom Expansion CM AT RISK project, hereinafter, "**PROJECT**," subject to the negotiation, preparation, approval and execution of a definitive agreement between Owner and CM AT RISK; and

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

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

ARTICLE 1. EXTENT OF AGREEMENT; DEFINITIONS

Agreement. This **PROJECT** is comprised of two distinct parts identified as follows; (1) Phase 1 - Preconstruction Services; (2) Phase 2 – Construction Services (to be established in a separate amendment). All phases, including preconstruction services and architect-engineering services, may not exceed the total Marion County Project Budget established by the Board of County Commissioners. The CM AT RISK accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The CM AT RISK covenants with the Owner to furnish its skill and judgment as a Construction Manager and General Contractor with specific expertise in the planning and construction of the **PROJECT** and to cooperate with the Owner and the Owner's representatives, including specifically the Project Architect-Engineer (hereinafter referred to as "AE"), in furthering the interests of the Owner. The AE shall be a County employee for this **PROJECT**. The CM AT RISK agrees to furnish efficient business administration and superintendence and use its best efforts to complete the **PROJECT** in the best and most expeditious and economical manner, consistent with the interests of the Owner. The CM AT RISK agrees to provide the services required by this Agreement to complete such services consistent with the Owner's direction, the approved

program, and the terms of this Agreement, in accordance with a standard of care which is ordinarily exercised by other construction managers and general contractors in similar circumstances.

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

1.02 Extent of Agreement. This agreement for Construction Management Services for the **PROJECT** represents the entire agreement between the Owner and the CM AT RISK and supersedes any prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the Project Plans and Specifications and may be amended only by written instrument signed by both Owner and CM AT RISK.

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

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

ARTICLE 2. PURPOSE; PROPOSAL; SCHEDULE

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

2.02 Response to Request for Proposal. CM AT RISK's Response to the Request for Proposal for Construction Management Services submitted by CM AT RISK to Owner is hereby found to be consistent with and in conformance with the provisions of Owner's Request for Solicitation No.24Q-061, and is in the best interests of the citizens of Marion County, Florida. It is the intent of the parties that the CM AT RISK's Response to the Request for Proposal for Construction Management Services be implemented pursuant to this Agreement, and, therefore, such Response is hereby merged into and is effectuated by this Agreement. Reference is hereby made to the response to the Request for Proposal for Construction Management Services submitted by CM AT RISK to Marion County, as well as any supplementary representations and statements furnished by CM AT RISK to Marion

County during the CM AT RISK selection process. The parties acknowledge that the representations and statements or information contained therein have been relied upon by the Owner and have resulted in the selection of CM AT RISK as the construction manager for this **PROJECT**. However, Owner acknowledges that the terms and conditions for the performance of the CM AT RISK and for the provision of its services are solely as contained within this Agreement.

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

ARTICLE 3. COMPENSATION

3.01 CM AT RISK'S Compensation. The Owner agrees to pay to the CM AT RISK as compensation for all of its services and work provided for hereunder, including preconstruction and construction services. The CM AT RISK fee which will include all preconstruction costs will be **6.5%** of the GMP.

Preconstruction Services shall be payable to the CM AT RISK if the project stagnates after construction drawings. Marion County will negotiate a lump sum amount to compensate the CM AT RISK for efforts during the preconstruction phase. This lump sum amount would be subtracted from the total project fee after we commence construction. CM AT RISK If at any time during the preconstruction design phase, it can reasonably be concluded that CM AT RISK's services are not being provided in accordance with the schedule of preconstruction services, CM AT RISK shall be reimbursed based upon a percentage of the services performed during the prior month.

CM AT RISK

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

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

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

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

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

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

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

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

3.04.1 Direct Material Purchases. The CM AT RISK shall review the design for the purpose of identifying major equipment and/or material purchases that may be advantageous for the Owner to purchase directly from suppliers as a cost saving measure. Once items have been identified and quantified by the CM AT RISK, and approved by the Owner for direct purchase, the Owner will issue purchase orders and process payment for invoices approved by the CM AT RISK.

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

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

ARTICLE 4.
CONSTRUCTION MANAGER'S RESPONSIBILITIES AND SERVICES

4.01 All documentation listed is required to be submitted to the County's Project Manager.

4.02 Project Management Information System. Commencing immediately following the date established by the Notice to Proceed, the CM AT RISK shall implement and shall utilize throughout the life of this Agreement all subsystems of the Project Management Information System hereinafter referred to as "PMIS." The reports, documents and data to be provided through PMIS shall represent an accurate assessment of the current status of the **PROJECT** and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the AE monthly and shall accompany each pay request. If requested by the Owner, the CM AT RISK shall conduct a comprehensive workshop in Marion County, Florida, for participants designated by the Owner and such additional seminars as are required to provide instruction. The workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS. The PMIS shall be described in terms of the following major subsystems:

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

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

(b) A monthly cost narrative describing the current construction cost estimate and status of the **PROJECT**.

(c) A monthly scheduling narrative summarizing the current status of the overall Project Schedule. This report shall include an analysis of the various Project Schedules, a description of the critical path, and the analysis as necessary to compare planned performance with actual performance.

(d) A monthly accounting narrative describing the current actual cost and payment status of the **PROJECT** with supporting document(s). This report shall relate current encumbrances and expenditures to the budget allocations.

(e) A monthly construction progress report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations programs, permits, construction problems and recommendations and plans for the succeeding month.

(f) A daily construction diary during the construction phase describing events and conditions on the project site.

(2) Schedule Control. As soon as reasonably possible following execution of this Agreement, but not later than thirty (30) days following full execution hereof, the CM AT RISK

shall prepare a Project Schedule using the critical path method, establishing a detailed schedule for preconstruction services, construction and Owner occupancy of the **PROJECT**, subject to review of Owner and AE, and approval or rejection by Owner within thirty (30) days of delivery to Owner. The Project Schedule shall include a scheduled Construction Commencement Date and Project Substantial Completion Date, which dates shall accommodate known or reasonably anticipated geographic, atmospheric and weather conditions. The Project Schedule will serve as the framework for the subsequent development of all detailed schedules. The Project Schedule shall be produced and updated monthly throughout the **PROJECT**. In a manner consistent with the Project Schedule, the CM AT RISK shall prepare and submit to the AE a construction schedule in quadruplicate graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the **PROJECT**, showing the sequence in which the CM AT RISK proposes for each such activity to occur as a necessary incident to performance of the work required to complete such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The AE shall determine whether the construction schedule delivered and submitted by the CM AT RISK meets the requirements stated above and whether the construction schedule is consistent with the Project Schedule. Following development and submittal of the construction schedule, the CM AT RISK shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the **PROJECT**, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. Each such update and/or revision to the construction schedule shall be submitted to the Owner and AE in duplicate. The CM AT RISK shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules.

(a) The CM AT RISK shall prepare a construction schedule for work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It shall show the interrelationships between the work of the successful bidder and that of other subcontractors, and shall establish initial completion objectives keyed to the Project Schedule.

(b) Upon the award of each subcontract, the CM AT RISK shall jointly with the subcontractor, develop a schedule which is more detailed than the original construction schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

(c) The CM AT RISK shall jointly develop with the AE and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn over

procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The occupancy schedule shall be produced and updated monthly from its inception through final Owner occupancy.

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

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

(4) Cost Control. The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the **PROJECT** requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all Project Costs, will not exceed the Project Budget. Based upon a quantitative material take off with current local costs for each bid group by subcontract package, within a reasonable time period as determined by the Owner in the Owner's sole discretion, the CM AT RISK shall provide its estimate of the total Project Costs for the **PROJECT**. These costs will be detailed by line item budget with a cost corresponding to each of the following stages or phases:

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

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

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

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

(c) The complete activity history of each item in the Project accounting structure. It shall include the budget, estimate, and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed, and approved dates and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.

(d) A cash flow diagram showing the projected accumulation of cash payments against the **PROJECT**. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.

4.03 Design Review and Recommendations and Warranty

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

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

(3) Long Lead Procurement. The CM AT RISK shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials, and supplies). When each item is identified, the CM AT RISK shall notify the subcontractors, Owner and

the AE of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the AE has completed drawings and technical specifications and the CM AT RISK has obtained permitting approval, the CM AT RISK shall prepare invitations for bids. Copies shall be supplied to Owner in advance of the invitation to bid for Owner's information and comment. The CM AT RISK shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Owner and AE of any problems or prospective delay in delivery.

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

(5) Interfacing.

(a) The CM AT RISK shall take such measures as are necessary to ensure proper construction and delivery of the **PROJECT**, including but not limited to providing that all construction requirements will be covered in the separate Procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its scheduling for start and completion and its relationship to other separate contractors.

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

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

(7) Weather Protection. The CM AT RISK shall ascertain what temporary enclosures of building areas, if any, should be provided for and may be provided in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. The CM AT RISK shall also be responsible for providing weather protection for work in progress and for materials stored on site.

(8) Market Analysis and Stimulation of Subcontractor Interest.

(a) The purpose of this subsection is to insure that the CM AT RISK makes

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

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

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

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

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

(4) If any bid package consistent with the Project Plans and Specifications for which the lowest price submitted by a subcontractor is in excess of the amount allocated by the CM AT RISK for such bid package (unless Owner through change order changes the Scope of Work and the Guaranteed Maximum Price (GMP)), one of the following may occur: (1) the price of the bid package may be negotiated with the lowest responsible bidder, or (2) at the CM AT RISK's request and expense, and at the Owner's sole option, Owner may require the AE to make certain changes in the Project Plans and Specifications as are necessary to bring that particular package into line, consistent with Owner's program and the Project's financial feasibility, or (3) with the approval of the Owner, funds may be reallocated from the construction contingency within the GMP to pay the difference between the low bid

price and the amount allocated for the bid package, but in no case shall such approval serve to increase the GMP of the **PROJECT**.

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

4.06 Construction Phase; Building Permit; Code Inspection.

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

(2) Code Inspections. All projects require detailed code compliance inspection during construction in disciplines determined by the Permitting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing, and general building. The CM AT RISK shall notify the appropriate inspector(s) and the AE's representative, no less than 24 hours in advance that the work is ready for inspection and before the work is covered up. All inspections shall be made for conformance with the applicable ordinances and building codes. Costs for all re-inspections of work found defective and subsequently repaired shall not be included as Project costs and shall be borne by the CM AT RISK or as provided in the contract between CM AT RISK and subcontractor.

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

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

(5) Schedule Provision - Construction Phase. The CM AT RISK shall continue to provide current scheduling information and provide direction and coordination regarding beginning and finishing dates, responsibilities for performance and the relationships of the CM AT RISK's work to the work of its subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Project Schedule. The Project Schedule shall include all phases of procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The CM AT RISK shall advise the Owner, its representatives, and the AE of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond its control. The CM AT RISK shall hold job-site meetings at least biweekly with the Construction Team and at least once each week with the subcontractors and the AE's field representative, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors. The CM AT RISK shall prepare and maintain a record of such meetings and distribute copies as necessary.

(6) Solicitation of Subcontracts.

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

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

(b) As part of such bid preparation, the CM AT RISK shall review the specifications and drawings prepared by the AE. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the CM AT RISK shall be brought to the attention of the Owner and AE in written form.

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

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

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

(f) Advertisement Timeframe

The CM AT RISK shall publicly advertise the bidding for a period of time not less than 30 days. Such timeframes may only be waived or modified to a lesser time with approval of the County's Director of Procurement Services.

(g) Advertisement Location/Media

The CM AT RISK shall publicly advertise for the period listed above in a regionally circulated newspaper and on their company website or through a third party eProcurement system where available. The advertisement must run at least once 10-20 days prior to the opening date following the above thresholds. The CM AT RISK's advertisement must include the date and time of the submission deadline. The CM AT RISK shall make every effort to receive maximum exposure and therefore receive adequate competition for their advertisement.

(h) Documentation Responsibility

The CM AT RISK shall maintain files that adequately support the competitive solicitation process chosen and followed by the CM AT RISK. At minimum, the CM AT RISK shall provide to the County assigned Project Manager a summary bid tabulation depicting all bids received broken down by discipline and clear indication of the selected sub-contractor(s). Should the CM AT RISK not select the lowest bidder in any instance, a written description as to why the lowest bidder was not selected must be provided within the bid tabulation summary.

The bid tabulation summary and the guaranteed maximum price documentation shall be provided to the County Project Manager for review. The GMP documentation shall also provide a breakdown of pricing by discipline.

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

(8) Subcontractor. The CM AT RISK shall solely supervise the subcontractors. The CM AT RISK shall negotiate all change orders and field orders with all affected subcontractors and shall review the costs and advise the Owner and AE of their validity and reasonableness, acting in the Owner's best interest. Before any work is begun on any change order which is to be funded through contingency, approval for use of contingency funds must be secured from Owner and a written authorization from the Owner must be issued. However, when there is an imminent threat to health and safety, and Owner's concurrence is impractical, the CM AT RISK shall act immediately to remove the threats to health and safety and shall subsequently fully inform Owner of all such action taken. The CM AT RISK shall also carefully review all shop drawings and then forward the same to the AE and Owner for review and actions. The AE will transmit them back to the CM AT RISK who will then

issue the shop drawings to the affected subcontractor for fabrication or revision. The CM AT RISK shall maintain a suspense control system to promote expeditious handling. The CM AT RISK shall request the AE to make interpretations of the drawings or specifications requested of him by the subcontractors and shall maintain a business system to promote timely response. The CM AT RISK shall inform the AE which shop drawings or requests for clarification have the greatest urgency and need to be responded to first. The purpose shall be to enable the AE to prioritize requests coming from the CM AT RISK. The AE shall timely respond. The CM AT RISK shall advise the Owner and AE when timely response is not occurring on any of the above.

(9) Job Site Requirements.

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

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

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

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

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

(v) Provide and administer a safety program for the **PROJECT** to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with best acceptable practice.

(vi) Provide quality control program.

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

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

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

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

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

(a) Job Meetings. Hold progress and coordination meetings to provide for a

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

(b) Material and Equipment Expediting. Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors and maintain a material and equipment expediting log.

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

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

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

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

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

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

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

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

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

- Contracts or Purchase Orders
- Shop Drawings submittal/Approval Logs Equipment
- Purchase/Delivery Logs
- Contract Drawings and Specifications with Amendment
- Warranties and Guarantees Cost
- Accounting Records Labor Costs
- Material Costs Equipment
- Costs
- Cost Proposal Request Payment
- Request Records Meeting Minutes
- Cost Estimates Bulletin
- Quotations Lab Test Reports
- Insurance Certificates and Bonds Contract Changes
- Purchase Orders
- Material Purchase Delivery Logs Technical
- Standards
- Design Handbooks
- Record Drawing Marked Print Operating and
- Maintenance Instruction Daily Progress Reports
- Transmittal Records Inspection Reports
- Bid/Award Information
- Bid Analysis and Negotiations Punch Lists
- PMIS Schedule and updates
- Suspense (Tickler) Files of Outstanding Requirements Documentation of
- Good Faith Effort
- Correspondence Files

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

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

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

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

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

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

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

The AE approval of Shop Drawings or samples shall not relieve the CM AT RISK from his responsibility for any deviations from the requirements of the Contract Documents, unless the CM AT RISK has in writing called the AE's attention to such deviation at the time of submission and the Owner and the AE have given written approval to the specific deviation; nor shall any approval by the AE relieve the CM AT RISK from responsibility for errors or omissions in the Shop Drawings.

4.07 Project Schedule; Substantial Completion; Occupancy.

(1) Establishment of Project Substantial Completion Date. At the time a Guaranteed Maximum Price (GMP) is established, the Project Substantial Completion Date for completion of the construction may be amended by Owner upon recommendation of Construction Team, if reasonably necessary, which Project Substantial Completion Date shall be subject to Force Majeure. An amendment to Substantial Completion Date under this section will not necessarily involve additional CM AT RISK compensation. The CM AT RISK agrees to complete the construction prior to the Project Substantial Completion Date. The CM AT RISK acknowledges that failure to complete the **PROJECT** prior to the Project Substantial Completion Date will result in substantial damages to the Owner. The CM AT RISK shall be assessed liquidated damages in the amount, (****Liquidated Damages will be established with Phase 2 amendment**), per calendar day for each day completion is extended beyond the Project Substantial Completion Date, plus any fines and penalties directly imposed against Owner by any regulatory and/or governmental authority against Owner. Provided, however, CM AT RISK and Owner shall cooperate with each other, and shall use best efforts and due diligence to avoid the imposition of any such fines and/or penalties.

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

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

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

4.08 CM AT RISK's Warranty. The CM AT RISK warrants that all labor and materials will conform to the Project Plans and Specifications. The CM AT RISK further warrants that all materials and equipment will be new, of good quality and free from any defects. With respect to the same work, the CM AT RISK further agrees to correct or replace as necessary all work found by the Owner to be defective in material and workmanship or not in conformance with the Project Plans and Specifications for a period of one year from the Project Final Completion Date. CM AT RISK shall use its best efforts and due diligence to ensure that, during the warranty period, those entities or individuals who have provided direct warranties to the Owner as required by the contract documents perform all required warranty work in a timely manner and at the sole cost and expense of such warranty providers. The direct cost of any warranty work shall be paid by CM AT RISK. The CM AT RISK shall collect and deliver to the Owner any specific written guaranties or warranties given by others as required by the contract documents. Also, the CM AT RISK shall conduct, jointly with the Owner and the AE, a warranty inspection eleven (11) months after the Project Final Completion Date.

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

ARTICLE 5. OWNER'S RESPONSIBILITY

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

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

5.03 Project Plans and Specifications; Architect. The AE, as an agent and representative of Owner, is responsible for the preparation of Project Plans and Specifications which consist of drawings, specifications and other documents setting forth in detail the requirements for the construction of the **PROJECT**. All of such Project Plans and Specifications shall be provided either by Owner or the AE and CM AT RISK shall be under no obligation to provide same and shall be entitled to rely upon the accuracy and completeness of the Project Plans and Specifications provided by the AE, and all preliminary drawings prepared in connection therewith.

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

5.05 Information; Communication; Coordination. The Owner hereby designates the Director of Facilities Management or the Director of Facilities Management's designee as Project Coordinator, to act in the Owner's behalf with respect to the **PROJECT**. The Project Coordinator shall examine all documents or requests for information submitted by the CM AT RISK and shall advise CM AT RISK of Owner's decisions pertaining thereto within a reasonable period of time to avoid unreasonable delay in the progress of the CM AT RISK's services. CM AT RISK shall indicate if any such documents or requests warrant priority consideration. However, decisions pertaining to approval of the Project Schedule as it relates to the date of Substantial Completion, the Project cost, CM AT RISK's compensation, documentation relating to use of contingency, approving or changing the GMP shall only be effective when approved in writing by the Owner. Owner reserves the right to designate a

different Project Coordinator provided CM AT RISK is notified in writing of any such change. Owner and AE may communicate with subcontractors, materialmen, laborers or suppliers engaged to perform services on the **PROJECT**. Neither the Owner nor the AE shall attempt to direct the work of or otherwise interfere with any subcontractor, materialmen, laborer or supplier or otherwise interfere with the work of the CM AT RISK.

5.06 Construction Inspections and Coordination. Owner, AE and CM AT RISK agree to cooperate and coordinate with each other and all Permitting Authorities, including specifically: Marion County Building Safety.

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

ARTICLE 6. SUBCONTRACTOR SELECTION AND PAYMENT PROCESS

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

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

6.03 Application for Progress Payments.

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

applicable insurance. All progress payments will be subject to the retainage percentage. Such retainage shall be paid and will be issued in the final payment after acceptance by the Owner of the Work.

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

(2) Approval of Payments. The AE will, within ten (10) calendar days after receipt of each Application for Payment, either indicate his approval of payment and deliver the application to the Owner or return the Application to the CM AT RISK indicating in writing the reason for refusing to approve payment. In the latter case, the CM AT RISK may make the necessary corrections and resubmit the Application. The Owner will, within five (5) calendar days after receipt of each approved application for payment, either indicate their approval of payment and within fifteen (15) calendar days pay the CM AT RISK ninety five percent (95%) of the portion of the GMP properly allocated to labor, materials and equipment incorporated in the Work and ninety five percent (95%) of the portion of the GMP properly allocated to materials and equipment suitably stored at the site or at some other location or return the application to the CM AT RISK through the AE indicating in writing the reason for refusing to approve payment. In the latter case, the CM AT RISK may make the necessary corrections and resubmit the application to the AE.

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

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

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

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

RISK, the CM AT RISK shall promptly restore such monies to the Owner, adjusting pay requests and Project bookkeeping as required.

Commencing with second application of the Estimate and Requisition for Payment form, the Owner may require, as a condition of payment, the submission of releases of lien from any or all subcontractors. Where the Owner so requires, the releases furnished shall be original copies, properly executed and notarized, in a form acceptable to the Owner.

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

6.04 Application for Final Payment.

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

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

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

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

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

The CM AT RISK will be required to submit with his final payment documents a DBE (Disadvantaged Business Enterprise) Participation Certification, indicating all DBE subcontractor(s) and amount(s) utilized for the **PROJECT**.

At the final completion of the construction **PROJECT** the Owner's Project Manager will prepare a Contractor Performance Evaluation and forward to the CM AT RISK for review, comment and signature.

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

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

ARTICLE 7 CHANGES IN THE PROJECT

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

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

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

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

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

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

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

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

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

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

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

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

Maximum Price (GMP) shall be reviewed by the AE. Any change in the Guaranteed Maximum Price (GMP) shall be incorporated in a Change Order and approved by the Owner. No claim by the CM AT RISK for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

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

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

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

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

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

Regardless of how the value of Work covered by a Change Order or any other claim for an increase or decrease in the Guaranteed Maximum Price is determined, in no case shall the total amount of overhead and profit, including all tiers of subcontractors, exceed 10% of the cost of the Work, unless otherwise approved by the Owner. Such 10% limit shall not include the cost of the Construction Manager's General Conditions or CM AT RISK Fees where due.

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

The Owner shall not be responsible for any delay in the completion of the **PROJECT**

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

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

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

ARTICLE 8.

RELATIONSHIP BETWEEN CM AT RISK AND ARCHITECT-ENGINEER (AE)

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

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

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

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

8.05 Uncovering of Work.

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

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

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

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

ARTICLE 9 CONTRACTOR'S LIABILITY INSURANCE

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

liability insurance. As a prerequisite to the Owner signing the Contract, the CM AT RISK will file with the Owner certificates of such insurance, acceptable to the Owner; these certificates shall contain a provision for cancellation.

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

An Insurance Certificate shall be required from the CM AT RISK. Such form must be properly executed and submitted by an authorized representative of the insurance company and CM AT RISK. Such certificate of insurance state that the coverage is primary, and shall be in the types and amounts stated below.

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

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

The Certificate of Insurance must contain the following limits:

(a) Worker's Compensation: Coverage to apply for all employees for Statutory Limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a minimum limit of \$1,000,000 each accident and \$1,000,000 each employee and \$1,000,000 policy limit for disease. Owner need not be named as an additional insured, but the certificate shall include a waiver of subrogation from the carrier.

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

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

(d) All Risk Builders Risk or Installation Floater: Upon execution of the Phase 2 Amendment, and prior to issuance of the Notice to Proceed for Construction Phase services, the CM AT RISK shall also procure and maintain All Risk coverage, with the limits of insurance to equal 100% of the completed contract amount of such addition(s), building(s), structure(s), materials and equipment, and shall protect and be payable to CM AT RISK, Owner and Owner's designees as their interests may appear The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against CM AT RISK, Owner or any designee of

Owner. The Builder's Risk policy shall insure against all risks of direct physical loss or damage to property from any external cause including flood and earthquake Any deductible is the responsibility of the CM AT RISK. The Owner shall be named as an additional insured only with respect to losses in connection with this contract.

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

(e) Owner's Liability and Insurance. Owner shall not be responsible for purchasing and maintaining any insurance to protect the interests of CM AT RISK, its subcontractors or others regarding the Work. Owner specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive the same including, but not limited to, the procedural and substantive provisions of Section 768.28, Florida Statutes and Section 95.11, Florida Statutes.

ARTICLE 10. FORCE MAJEURE, FIRE OR OTHER CASUALTY

10.01 Force Majeure.

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

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

10.02 Casualty; Actions by Owner and CM AT RISK. During the Construction Period, if the **PROJECT**, or any part thereof, shall have been damaged or destroyed, in whole or in part,

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

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

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

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

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

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

ARTICLE 11 INDEMNIFICATIONS

11.01 Indemnification by CM AT RISK. The CM AT RISK shall indemnify, save harmless and defend the Owner and all of its officers, agents, consultants and employees from and against all liabilities, damages, losses, claims, demands, payments, suits, actions, recoveries and

judgments of every nature and description, including, but not limited to, property damage, harm or personal injury to third persons, such as death, and costs, including but not limited to reasonable attorneys' fees, brought or recoverable against it or them by reason of any act or omission of the CM AT RISK, his agent, consultants, employees, subcontractors etc., in the execution of the work or in consequence of any negligence, recklessness, carelessness or intentional wrongful misconduct of CM AT RISK and persons employed or utilized by CM AT RISK in guarding the same in the performance of this Agreement and agrees to assume any related cost.

- (1) The CM AT RISK shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of work until the same shall have been completed and accepted. The CM AT RISK agrees to repair, restore or rebuild any damages he causes to any property of the Owner. He shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation or order. The CM AT RISK shall give to the proper authorities all required notices relating to the work, obtain all official permits and licenses and pay all proper fees. He shall repair any damage that may have occurred to any adjoining building, structure, utility or private property in the course of this work.
- (2) This Paragraph 11.01 shall not be construed in any way to alter Owner's waiver of sovereign immunity or the limits established in Section 768.28, Florida Statutes (2021).
- (3) CM AT RISK expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by CM AT RISK shall in no way limit the responsibility to indemnify, keep and save harmless and defend Owner and its officers, board members, employees, agents, and instrumentalities.
- (4) 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 CM AT RISK and/or any subcontractor or subconsultants under worker's compensation acts, disability benefit acts, or other employee benefit acts.
- (5) In the event that any claims are brought or actions are filed against Owner with respect to the indemnity contained herein, CM AT RISK agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. CM AT RISK agrees that Owner may select the attorneys to appear and defend such claims or actions on behalf of Owner. CM AT RISK further agrees to pay the reasonable attorneys' fees and costs incurred by those attorneys selected by Owner to appear and defend such claims or actions on behalf of Owner. Owner, at its sole option, shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against Owner.
- (6) To the extent this indemnification clause does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract Documents shall hereby be interpreted consistent with the Parties' intention for the indemnification clause and Contract Documents to comply with Chapter 725, Florida Statutes as may be amended.

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

or failure to give is the primary cause of the injury or damage.

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

- (1) Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- (2) Damages incurred by the CM AT RISK 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.
- (3) 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 Owner, as a consequence of such delay and both Parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of CM AT RISK to achieve Substantial Completion of Work as specified in this Agreement. Owner shall have the right to deduct from and retain out of monies which may be then due or which may become due and payable to CM AT RISK, the amount of such liquidated damages and if the amount retained by Owner is insufficient to pay in full such liquidated damages, CM AT RISK shall pay in full such liquidated damages
- (4) Beginning on the first calendar day after scheduled Substantial Completion of Work, liquidated damages shall accrue at the rate agreed upon by both Parties. When Owner reasonably believes that Substantial Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due CM AT RISK an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when CM AT RISK overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to CM AT RISK those funds withheld, but no longer applicable, as liquidated damages.

ARTICLE 12. DEFAULT; TERMINATION

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

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

earned or accrued by CM AT RISK up to and including the date of termination.

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

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

12.02 Termination by the CM AT RISK. In the event that the **PROJECT** is stopped for a period of sixty (60) days by the CM AT RISK for the Owner's failure to make payments thereon, or in the event that Owner shall have otherwise defaulted in its obligations under the terms of this Agreement, the CM AT RISK, upon giving fourteen (14) business days written notice of such event of nonpayment or default to the Owner, and upon the expiration of such fourteen (14) business day period, if such nonpayment or other event of default has not been cured, the CM AT RISK may terminate this Agreement and demand payment of all of the CM AT RISK's compensation hereof and Owner shall assume and become liable for obligations, commitments and unsettled contractual claims that CM AT RISK has previously undertaken or incurred pursuant to this Agreement.

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

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

(2) If the CM AT RISK is adjudged bankrupt, or if it makes a general assignment

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

12.04 Obligations, Rights and Remedies Cumulative. The specific rights and remedies to which either the Owner or the CM AT RISK are entitled are not exclusive and are intended to be in addition to any other remedies or means of redress to which the Owner or the CM AT RISK may lawfully be entitled and are not specifically prohibited by this Agreement.

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

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

12.07 Attorney's Fees and Costs. Should any type of claim be made or action be commenced with respect to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees, appellate attorneys' fees, expert fees, paralegal fees and all reasonable costs incurred of any type whatsoever, whether taxable at law or not, in any way related to or arising from any such claim or action. The prevailing Party shall be the Party who receives a net positive recovery, award or judgment after the adjudication of all claims and compulsory counterclaims arising from the transaction or occurrence at issue as the same are defined by the Florida Rules of Civil Procedure. If the claim is decided by an administrative or governmental body, the prevailing Party shall be that Party who procures an action or finding in its favor pursuant to its complaint or defense. If the claim

or action is for declaratory relief, the prevailing Party shall be that Party who receives a favorable interpretation or the interpretation requested of the matter submitted to the court, panel or other tribunal. The Parties further agree that exclusive jurisdiction for any action in any way pertaining to or arising from this Agreement shall lie in the State Circuit, County, or Federal Courts in and for Marion County, Florida. In the event of suit by Owner against CM AT RISK and/or its surety, or suit by CM AT RISK and/or its surety against Owner the venue of such suit shall be in Marion County, Florida, and the Parties hereby waive for themselves and those with whom they deal on behalf of this Agreement whatever other rights either of them may have in the selection of venue. Owner and CM AT RISK further agree to knowingly, voluntarily and without any undue influence whatsoever waive any right or entitlement to trial by jury and IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ACTION ARISING FROM ANY DISPUTE HEREUNDER SHALL BE TRIED WITHOUT A JURY.

ARTICLE 13. MISCELLANEOUS

13.01 Harmony. CM AT RISK is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by it and its subcontractors for work on the **PROJECT** shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the **PROJECT**. CM AT RISK further agrees that this provision will be included in all subcontracts of the subcontractors as well as the CM AT RISK's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge on account of membership or non-membership in any labor union or labor organization, the right of any person to work of the Florida Constitution. Owner's liability for obligations, commitments and unsettled contract claims in the event of termination of this Agreement, shall be limited in accordance with an agreed to subcontract termination clause approved by Owner.

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

CM AT RISKCM AT RISK13.03 Successors and Assignment. No transfer or assignment of the rights and/or obligations of Owner under this Agreement shall be effective without the written consent of the CM AT RISK. No transfer or assignment of the rights and/or obligations of the CM AT RISK under this Agreement shall be effective without the written consent of the Owner. The terms herein contained shall bind and inure to the benefit of the Owner, its successors and assigns, and the CM AT RISK, its successors and assignments, except as may be otherwise specifically provided herein.

13.04 Notice, COMPUTATION OF TIME.

(1) Giving Notice.

Except as otherwise provided herein, all written communication between the Parties, including all notices, shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be deemed effective if mailed, when deposited in a United States Postal Service mailbox with postage prepaid and if hand delivered, upon personally handing same to the Party to whom the notice of other communication is addressed with signed proof of delivery. If otherwise delivered, notices shall be considered delivered when reflected by an electronic

mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by CM AT RISK. Both Parties certify that each has software capable of sending electronic mail read receipts to the other. Any Party sending notice by electronic mail acknowledges and accepts the inherent risks that come with same. If notice is delivered in multiple ways, notice shall be considered delivered at the earliest delivery time. CM AT RISK's and Owner's representatives and addresses for notice purposes are:

TO CONTRACTOR:

Dinkins Construction LLC
2831 SE 17th St.
Ocala, FL 34471
chap@dinkinsconstruction.com

TO MARION COUNTY:

ATTN:
Facilities Dir.
Jared
Goodspeed
Address
Tele: (352) 671-8740
Jared.Goodspeed@MarionFL.org

With A Copy to:

Procurement Director and
2631 SE Third St.
Ocala, FL 34471
Tele: (352) 671-8444
Susan.Olsen@MarionFL.org

County Administrator
601 SE 25th Ave.
Ocala, FL **34471**
Tele: (352) 438-2300
CountyAdministrator@MarionFL.org

Alternatively, the Parties may elect to receive said notices solely by e-mail. Owner hereby elects to receive all notices solely by email and designates its email address as procurement@marionfl.org. If CM AT RISK agrees to accept all notices solely by e-mail and acknowledges and accepts the inherent risks that come with accepting notices solely by e-mail, CM AT RISK may designate up to two (2) e-mail addresses: Designation signifies CM AT RISK's election to accept notices solely by e-mail.

(2) Computation of Time.

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. A calendar day of twenty-four (24) hours measured from midnight to the next midnight shall constitute a day

To the CM
AT RISK

Dinkins Construction LLC

With a copy:

To the
Owner

Marion County Board of County
Commissioners
P.O. Box 398
Fort Myers, FL 33902-0398
Facilities Construction and
Management
,Project Manager

Department
of
Project
Manager

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

Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws and if the remainder of this Agreement can substantially be reasonably performed without material hardship, so as to accomplish the intent and the goals of the parties hereto.

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

Submission to Jurisdiction.

Each party to this Agreement hereby submits to the Jurisdiction of the courts of the

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

The present registered agent of Dinkins Construction LLC., the individual designated for service of process by the corporation which is CM AT RISK under the terms of this Agreement, with an address of 2831 SE 17th St., Ocala, FL 34471. If at any time during the term of this Agreement, the CM AT RISK is not a resident of the State of Florida or has no partner, officer, employee or agent thereof available for service of process as a resident of the State of Florida, or if any permitted assignee thereof shall be a foreign corporation, partnership or other entity or shall have no officer, employee or agent available for service of process in the State of Florida, CM AT RISK hereby designates the Secretary of State, State of Florida, its agent for the service of process in any court action between it and the Owner, arising out of or related to this Agreement and such service shall be made as provided by the laws of the State of Florida for service upon a nonresident; provided, however, that at the time of service on the Secretary of State, a copy of such service shall be mailed by prepaid, registered mail, return receipt requested, to the CM AT RISK at the address for notices.

Estoppel Certificates. The CM AT RISK and the Owner shall at any time and from time to time, upon not less than twenty-one (21) days prior notice by the other party, execute, acknowledge and deliver to the other a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications that the same as modified is in full force and effect and setting forth such modifications), the dates to which any changes have been paid in advance, if any, and, to the knowledge of such party, neither it nor the other party is then in default hereof, it being intended that any such statement delivered may be relied upon by any prospective purchaser, mortgagee, assignee of any mortgage or assignee of the respective interests in the **PROJECT**, if any, of either party made in accordance with the provisions of this Agreement.

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

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

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

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

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

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

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

13.17 Members of the Owner Not Liable.

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

(2) No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the Governing Body or agent or employee of the Owner in its, his or their individual capacity, and neither the members of the Governing Body of the Owner, nor any official executing this Agreement shall be

liable personally or shall be subject to any accountability by reason of the execution by the Owner of this Agreement or any act pertaining hereto.

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

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

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

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

IF THE CM AT RISK HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CM AT RISK'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC

RECORDS AT:

Public Relations, 601 SE 25th Ave., Ocala, FL 34471

Phone: 352-438-2300 Fax: 352-438-2309

Email: PublicRelations@MarionFL.org

ARTICLE 14 - ANNUAL APPROPRIATIONS.

14.1 CM AT RISK acknowledges that during any fiscal year Owner shall not expend money, incur any liability, or enter into any agreement which, by its terms, includes the expenditure of money in excess of the amounts budgeted as available for expenditure. Owner's performance and obligation to pay CM AT RISK under this Agreement is contingent upon annual appropriation being made for that purpose. If during the term of this Agreement, Owner does not make an annual appropriation necessary to continue its performance under this Agreement, this Agreement shall terminate upon the expiration of the funded fiscal year.

ARTICLE 15 • E-VERIFY.

15.1 Section 448.095, Florida Statutes, requires CM AT RISK to be registered and use the E-Verify system to verify the work authorization status of all newly hired employees and prohibits CM AT RISK from entering into this Agreement unless it is in compliance therewith. Information provided by CM AT RISK is subject to review for the most current version of the State or Federal policies at the time of the award of this Agreement.

A. Owner hereby affirms it is duly registered, uses, and adheres to the practices of the E-Verify system, including those outlined in the clauses below.

B. CM AT RISK has agreed to perform in accordance with the requirements of this Section and agrees as follows:

1) It certifies and assures Owner that CM AT RISK is currently in full compliance with Section 448.095, Florida Statutes, it is registered and uses the E-Verify System to verify work authorization status of all newly hired employees.

2) Owner shall immediately terminate this Agreement if Owner has a good faith belief that CM AT RISK has knowingly violated Section 448.09(1), Florida Statutes, that is, that CM AT RISK knowingly employed, hired, recruited, or referred either for itself or on behalf of another, private or public employment within the State an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States.

3) When CM AT RISK enters into a contract with an employee, a contractor or a subcontractor, CM AT RISK shall obtain from that contracting party ("Contracting Party") an affidavit stating that the Contracting Party does not employ, contract with, or subcontract with an unauthorized alien.

4) CM AT RISK shall maintain a copy of such affidavit for the duration of this Agreement and provide it to Owner upon request.

CM AT RISK shall immediately terminate the Contracting Party if CM AT RISK has a good faith belief that the Contracting Party has knowingly violated Section

448.09(1), Florida Statutes, as set forth above.

5) If Owner has a good faith belief that CM AT RISK's Contracting Party has knowingly violated Section 448.095, Florida Statutes, but that CM AT RISK has otherwise complied, Owner shall promptly order CM AT RISK to terminate the Contracting Party. CM AT RISK agrees that upon such an order, CM AT RISK shall immediately terminate the Contracting Party. CM AT RISK agrees that if it should fail to comply with such an order, Owner shall immediately terminate CM AT RISK.

6) If Owner terminates this Agreement with CM AT RISK, CM AT RISK may not be awarded a public contract for a least one (1) year after the date of termination.

7) CM AT RISK is liable for any additional costs incurred by Owner as a result of a termination under this Section.

8) Any such termination under this Section is not a breach of this Agreement and may not be considered as such.

9) CM AT RISK shall maintain records of its registration, use, and compliance with the provisions of the E-Verify system, including the registration and use by its subcontractors, and to make such records available to Owner or other authorized governmental entity.

10) To comply with the terms of this Employment Eligibility Verification provision is made an express condition of this Agreement and Owner may treat a failure to comply as a material breach of this Agreement.

ARTICLE 16 • SCRUTINIZED COMPANIES.

16.1 Certification.

A. If this Agreement is for One Million Dollars or more, CM AT RISK certifies that at the time it submitted its bid or proposal for this Agreement or before entering into this Agreement or renewing same, CM AT RISK was not then and is not now:

- 1) On the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, or
- 2) Engaged in business operations in Cuba or Syria.

B. If this Master Agreement is for any amount, CM AT RISK certifies that at the time it submitted its bid or proposal for this Agreement or before entering into this Agreement or renewing same, CM AT RISK was not then and is not now:

- 1) On the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes (2021), or
- 2) Engaged in a boycott of Israel.

16.2 Termination, Threshold Amount.

Owner may, entirely at its option, terminate this Agreement if it is for One Million Dollars and CM AT RISK meets any of the following criteria.

- A. Was entered into or renewed on or after July 1, 2011, through June 30, 2012, and CM AT RISK is found to meet any of the following prohibitions:

- 1) Submitted a false certification as provided under Section 287.135(5), Florida Statutes, or
- 2) Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes.

B. Was entered into or renewed on or after July 1, 2012, through September 30, 2016, and CM AT RISK is found to meet any of the following prohibitions:

- 1) Submitted a false certification as provided under Section 287.135(5), Florida Statutes;
- 2) Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or
- 3) Been engaged in business operations in Cuba or Syria.

C. Was entered into or renewed on or after October 1, 2016, through June 30, 2018, and CM AT RISK is found to meet any of the following conditions:

- 1) Submitted a false certification as provided under Section 287.135(5), Florida Statutes;
- 2) Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes;
- 3) Been engaged in business operations in Cuba or Syria; or
- 4) Been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel.

D. Was entered into or renewed on or after July 1, 2018, and CM AT RISK is found to meet any of the following prohibitions:

- 1) Submitted a false certification as provided under Section 287.135(5), Florida Statutes;
- 2) Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or
- 3) Been engaged in business operations in Cuba or Syria.

16.3 Termination. Any Amount.

Owner may, entirely at its option, terminate this Agreement if it is for any amount and meets any of the following criteria.

A. Was entered into or renewed on or after July 1, 2018, and

B. CM AT RISK is found to have been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel.

16.4 Comply: Inoperative.

The Parties agree to comply with Section 287.135, Florida Statutes, as it may change from time to time during the Term. The contracting prohibitions in this Section become inoperative on the date that Federal law ceases to authorize the State of Florida to adopt and enforce such contracting prohibitions.

ARTICLE 17 - DISCRIMINATORY VENDOR LIST, CONVICTED VENDOR LIST, ANTITRUST VIOLATOR VENDOR LIST.

17.1 CM AT RISK certifies and assures Owner that CM AT RISK and its affiliate, if any and as defined under the pertinent statutes, has not been placed on the Discriminatory Vendor List pursuant to Section 287.134, Florida Statutes, the Convicted Vendor List pursuant to Section 287.133, Florida Statutes, and the Antitrust Violator Vendor List pursuant to Section 287.137, Florida Statutes. CM AT RISK acknowledges that absent certain conditions set forth in the respective statutes, those that have been placed on such lists may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier or subcontractor under a contract with a public entity, may not transact business with a public entity, and may not benefit from certain economic incentives.

ARTICLE 18 - SOVEREIGN IMMUNITY.

18.1 Nothing in this Agreement shall be deemed to waive the sovereign immunity protections provided Owner pursuant to Florida law. Notwithstanding anything to the contrary set forth in this Agreement, Owner's obligation to indemnify CM AT RISK, if any, for any reason or purpose, whether in tort or contract, is limited and shall not exceed the limits set forth in Section 768.28, Florida Statutes. This Paragraph shall survive the termination of this Agreement.

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

Signed, sealed, and delivered in the presence of:

FOR COUNTY:

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA

Michelle Stone, Chair

BCC APPROVED
ACCEPTANCE DATE: _____

ATTEST:

Gregory C. Harrell,
MARION COUNTY CLERK OF COURT
Date: _____

FOR USE AND RELIANCE OF
MARION COUNTY ONLY,
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
MATTHEW G. MINTER DATE
MARION COUNTY ATTORNEY

WITNESSES:

Signed By: _____

Print Name: _____

Signed By: _____

Print Name: _____

**FOR CONTRACTOR:
Dinkins Construction LLC**

Signed By: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT A

DEFINITIONS

1. "Agreement" means this Agreement between Owner and Construction Manager, including any Exhibits attached hereto, and any amendments or revisions to this Agreement or any of the exhibits.
2. "Authorized Representative" means the person designated by the Owner and CM AT RISK, respectively, to act on its behalf, pursuant to the terms of this Agreement. The Authorized Representative is referred to herein in this Agreement as Project Coordinator.
3. "Change Order" means a written order to the CM AT RISK signed by the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Guaranteed Maximum Price or the Contract Time. The Guaranteed Maximum Price and the Contract Time may be changed only by a Change Order. A Change Order signed by the CM AT RISK indicates his agreement therewith, including the adjustment in the Guaranteed Maximum Price or the Contract Time.
4. "Completion (Final)" means acceptance of the Project by the Owner as evidenced by its signature upon a final payment Certification form and approval thereof by the Board of County Commissioners or their designee. The final payment Certification shall be signed only after the Owner has assured itself by tests, inspections, or otherwise that all of the provisions of the Contract have been carried out as required.
5. "Completion (Substantial)" means an acceptance of the Work by the Owner when construction is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended. A certificate of occupancy or compliance, when applicable, issued by the Building Official is required concurrent with or prior to issuance of the Certificate of Substantial Completion.
6. "Construction Commencement Date" means the date specified in the Construction Phase Notice to Proceed.
7. "Effective Date of the Agreement" means the date on which the agreement is signed and delivered by the latter of the two parties.
8. "Exhibits" means those agreements, forms of agreements, instruments and other documents attached hereto and designated as exhibits to this Agreement or incorporated by reference into this Agreement.
9. "Field Change Order" is a written change order requested by the AE, accepted by the CM AT RISK, and approved by the Project Coordinator for minor changes in

the Work,

not involving the adjustments in the Guaranteed Maximum Price or an extension of Time, and not inconsistent with the overall intent of the Contract Documents.

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

18. "Project Plans and Specifications" means the construction drawings and final specifications prepared by the Project Architect and any changes, supplements, amendments or additions thereto approved by the Owner and CM AT RISK, which shall
also include any construction drawings and final specifications required for the repair or construction of the Project.
19. "Project Schedule" means the estimated and approximate schedule and sequence of events for the commencement, progression and completion of the Project, and as such schedule may be amended as provided for in the Agreement.
20. "Punch List Completion Date" means the date upon which all previously incomplete or unsatisfactory items, as identified by CM AT RISK, Project Architect and/or Owner are completed in a competent and workmanlike manner, consistent with standards for renovation of this type and with good building practices in the State of Florida.
21. "Subcontractor" means any person or organization as defined in Paragraph 6.01 hereof.

End of Exhibit A

EXHIBIT B

PROJECT COSTS

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

PART I

Part IA - Costs Included Within CM AT RISK Fees

Proportion related to this project of:

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

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

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

Licenses.

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

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

Part IB – Reimbursable Project Costs Not Included within CM AT RISK Fee

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

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

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

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

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

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

Water consumption (monthly) - temporary construction use only.

Cleanup at the job site.

Barricades and safety equipment at the job site.

Temporary fencing and gates at the job site.

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

Weather protection at the job site.

Construction office trailer at the job site.

Record Drawings.

Progress Photographs/Video.

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

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

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

No costs shall be paid by the Owner to the CM AT RISK for any expenses made necessary to correct defective workmanship or to correct any work not in

conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the CM AT RISK.

Surveys; layout equipment and materials.

Temporary Toilets/holding tanks.

Dumpsters at the job site.

Watchmen at the job site.

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

PART II

Owner's Expenses

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

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

Additional surveys, except construction layout.

Easements and temporary construction easements.

Land use approvals, if required.

Impact Fees.

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

Additional insurance, if any.

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

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

Previously approved AE fees.

Already paid site acquisition costs.

Already completed Geotechnical and site studies.

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

End of Exhibit B

DRAFT

EXHIBIT C
PROJECT FORMS

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

End of Exhibit C

CM AT RISK EXHIBIT D
CM AT RISK'S BACKGROUND SCREENING AFFIDAVIT

CM AT RISK'S BACKGROUND SCREENING AFFIDAVIT

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the CM AT RISK who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The CM AT RISK is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Marion County at any time during such five (5) year period.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the CM AT RISK will be solely responsible for complying with such legal requirements. Furthermore, the CM AT RISK shall indemnify and hold Marion County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: _____

Signature

STATE OF _____

COUNTY OF _____

Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this ____ day of _____, _____, by the above-named person and in their stated capacity, and is either personally known to me or who has produce the following as identification: _____

[Stamp/seal required]

Signature, Notary Public