Anyone wishing to view supporting documents for agenda items, please contact Tamara Melton, City Clerk: 941-932-9463 or cityclerk@cityofbradenton.com

AGENDA
BRADENTON CITY COUNCIL MEETING
8:30 a.m Wednesday, March 8, 2023
CITY HALL COUNCIL CHAMBERS - 101 OLD MAIN STREET

REVISED AGENDA

1. INVOCATION & PLEDGE

Minister Jerry Wicker with Manatee LIFE Church

(The City does not endorse the religious beliefs of any speaker.)

2. MEETING CALLED TO ORDER

3. PROCLAMATIONS

a) Legislative: Save Soil Day - March 21, 2023
2023 Save Soil Day Proclamation

4. PRESENTATIONS

a) City Administration: Presentation by Fawley Bryant and Willis Smith on Fire Station #2 - Architectural Renderings and Projected Costs

5. CITIZEN COMMENTS

Citizen comments will be accepted at this time on any non-agenda item. Comments will be accepted on the agenda items at the appropriate time.

6. CONSENT AGENDA

a) Administrative Services: Contract for RFP 23-001 Agent of Record for Employee Benefits Program
Brown & Brown of Florida Contract
b) Clerk: Minutes from the February 8, 2023 City Council Meeting
2-8-2023 City Council Meeting Minutes
c) Clerk: Minutes from the February 22, 2023 City Council Meeting
2-22-2023 City Council Meeting Minutes
d) Finance: Resolution 23-22: 2023 IRS Standard Mileage Rate
2023 Mileage Resolution 23-22
e) Public Works & Utilities: Budget Adjustment BA23-7

Budget Adjustment BA23-7 and Quotes

f) Public Works & Utilities:

Continuing Services Contracts for Construction Manager at Risk (CMAR) Services
H.J. High Construction Management at Risk Services
Halfacre Contract Construction Management at Risk Services
NDC Construction Management at Risk Services
Tandem Contract Construction Management at Risk Services
Wharton Smith Contract Construction Management at Risk Services
Willis Smith Construction Management at Risk Services

7. BUSINESS/ADVERTISING, PETITIONS, HEARINGS & COMMUNICATIONS

a) Planning & Community Development: Resolution 23-23

A RESOLUTION OF THE CITY OF BRADENTON, FLORIDA, EXTENDING A "ZONING IN PROGRESS" FOR A PERIOD OF 180 DAYS RELATED TO THE FOLLOWING USES UNDER THE CITY'S FORM-BASED CODE – SALE OF SECONDHAND MERCHANDISE, PAWN SHOPS, DRUG TREATMENT FACILITIES, DRUG TREATMENT CLINICS, HOMELESS SERVICE FACILITIES, RESIDENTIAL FACILITIES FOR HOMELESS INDIVIDUALS, INTERNET CAFES AND MASSAGE PARLORS; PROVIDING FOR OFFICIAL NOTICE OF THIS ZONING IN PROGRESS AND THE INTENT TO RETROACTIVELY APPLY REGULATIONS ADOPTED HEREUNDER; PROVIDING FOR A TEMPORARY ADMINISTRATIVE HOLD ON THE PROCESSING OF APPLICATIONS FOR THE USES DESCRIBED HEREIN; AND PROVIDING FOR AN EFFECTIVE DATE.
Resolution 23-23

8. NEW BUSINESS BY DEPARTMENT HEADS, CITY ATTORNEY AND COUNCIL

a) City Administration: Request for emergency authorization, if necessary, to engage environmental litigation compliance firm to assist with compliance with Consent Decree in Suncoast Waterkeepers litigation.
b) City Administration: Discussion regarding future City Hall locations, subject to City Council approval.
c) City Administration: Discussion and motion regarding the negotiation of terms of purchase and Master Development Agreement regarding the considered disposition of City Hall with the remaining proposers.

9. UNFINISHED BUSINESS

10. COUNCIL REPORTS

11. DEPARTMENT HEAD REPORTS

12. ADJOURN

RULES OF PROCEDURE
FOR AGENDA AND PUBLIC APPEARANCES BEFORE CITY COUNCIL

Please place all cell phones on silent!

PRIOR TO COUNCIL MEETING: Appointments on the agenda, all items from Department Directors and other interested parties must be submitted before 4:30 p.m. on the Wednesday preceding the Council meeting. Anyone wishing to be placed on the agenda must contact Tamara Melton, City Clerk, at City Hall by phone 941-932-9463 or email: tamara.melton@bradentonfl.gov and give their name, business name (if applicable), whether they are resident taxpayers of the City and their business before Council. Appearances before Council will be authorized by the Mayor or Councilperson in charge of the meeting. NOTE: The Mayor may ask a city department to look into an issue prior to the meeting to see if the issue can be resolved. If the Mayor or Councilperson in charge of the meeting feels the request is justified, they will instruct the City Clerk as to its placement on the agenda.

Non-Discrimination Statement: The City of Bradenton prohibits discrimination in all of its services, programs or activities on the basis of race, color, age, disability, sex, national origin, religion, genetic information or marital status. Persons with a disability needing a reasonable accommodation to participate in, or who require assistance or an alternative means for communication of program information such as Braille, large print, etc., should contact as soon as possible, but at least 48 hours in advance:

City of Bradenton
ADA/Title VI Coordinator
101 Old Main Street
Bradenton, FL 34205
ADACoordinator@cityofbradenton.com
941-932-9400
TTY: 7-1-1 or 1-800-955-8771

La ciudad de Bradenton proveera servicio de interprete a las personas quienes su primer lenguage no es el ingles. Si necesita estos servicios, usted o su representante puede comunicar al ADA/Title VI Coordinator, 101 Old Main Street, Bradenton, FL 34205. Tambien puede llamar al (941) 932-9470 o enviar correo electronico a ADACoordinator@cityofbradenton.com

AT COUNCIL MEETING:

Citizen comments are accepted on non-agenda items and, per F.S. 286.0114, on all agenda 'action' items. All citizen comments related to quasi-judicial items are required to be under oath and such comments will be invited to be presented during the duly noticed public hearing.

If an individual (or agent) wishes to address the City Council, they shall first complete a comment card available at the back of the Chamber and submit such card to the City Clerk.

To discuss items identified on the agenda as "Public Hearing" the Public Hearing Comment (green) card should be completed. (Please circle "In Favor" or "Opposed" on the card as you will be summoned by that category.)

To discuss non-agenda items, or those items on the agenda that are NOT public hearings, the Citizen Comment (yellow) card should be completed. (Please state topic you would like to comment on.)

At the appropriate time during the meeting, the Mayor will call speakers to come forward. After being recognized by the Mayor, the individual should come to the podium and, for the public record, state their name, address, whether they are a resident taxpayer of the City of Bradenton, and whether they are in favor of or against the item they wish to address. In the case of an agent, they shall identify themselves, identify their clients by name, their clients' address, whether their clients are resident taxpayers of the City of Bradenton, and whether their clients are in favor of or against the topic they wish to address. The speaker should then proceed to state their position or present their information.

An individual appearance on all items will be limited to three (3) minutes unless the Mayor rules otherwise. Additional time will be allowed (up to 10 minutes at the discretion of the Mayor) if the speaker is officially representing a group, provided that proof is given that the person is authorized to speak on their behalf.

Note: If handouts are being distributed, please provide a minimum of ten (10) copies to the City Clerk. If you wish to display a drawing or rendering, contact Tamara Melton, as indicated above, prior to the meeting. Any submissions commented on, photographs, letters, renderings, etc. will be kept by the City Clerk for the official record.

PURSUANT TO FLORIDA STATUTE 286.0105: If an individual decides to appeal any decision made by the board, council, agency, or commission at this meeting, such individual will need a record of the proceedings, and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

PLEDGE OF PUBLIC CONDUCT We, the Mayor, City Council and Employees of

the City of Bradenton, agree to: *Establish a process to promote positive interaction among ourselves and the citizens of Bradenton in a positive and non-threatening environment. *Encourage visible, involved and active participation among all. *Promote improved communication through active listening, providing feedback and honest expression of ideas. *Utilize consensus for decision making. *We realize that though we may disagree, we will be respectful of each other. *We will direct all comments to the issues and will avoid personal attacks.

AGENDA ITEM NO. 3.a

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 8, 2023

SUBMITTED BY: Kelly Thomas, Legislative

ITEM TYPE: Proclamation

AGENDA SECTION: PROCLAMATIONS

SUBJECT: Save Soil Day - March 21, 2023

SUGGESTED ACTION: N/A

Is this item Quasijudicial?
No

Does this item require a public hearing?
No

EXPLANATION:
Save Soil Day Proclamation
March 21, 2023

FINANCIAL IMPACT:
N/A

ATTORNEY REVIEW/RECOMMENDATION:
N/A

SUGGESTED MOTION:
N/A

ATTACHMENTS:
2023 Save Soil Day Proclamation

City of Bradenton
Office of the Mayor

Proclamation

By virtue of the authority vested in me as Mayor of the City of Bradenton, I do hereby issue this proclamation honoring

Save Soil Day
March 21, 2023

Whereas, "Save Soil" is a global movement, launched by Sadhguru, uniting world leaders, visionaries, influencers and citizens of all nations behind a common purpose – to restore and safeguard the world's soil; and

Whereas, Save Soil aims to address the global soil crisis, recognizing that 52% of the world's agricultural soils are already degraded, and by 2050, 90% of Earth's soil could be degraded; and

Whereas, addressing soil degradation issues would bring solutions for the loss of biodiversity, nutritional deficiencies, food security, water scarcity, climate change, and mass migration; and

Whereas, the proposed solution is advocate for policies across all nations towards soil restoration and aim to increase organic content in agricultural soil to a minimum of 3-6%; and

Whereas, in an effort to raise awareness and activate support from leaders and citizens alike, Sadhguru was on a 30,000 km journey as a lone motorcyclist covering 27 nations over 100 days since March 2022; and

Whereas, the City wishes to participate in creating bright futures for our children and the future of our planet.

Now, Therefore Be It Resolved that, I, Gene Brown, as Mayor of the City of Bradenton, Florida, do hereby proclaim March 21, 2023, as ***Save Soil Day*** in Bradenton, and urge all citizens to be a part of the Save Soil movement to support policies towards soil restoration.

Gene Brown
Mayor
March 8, 2023

AGENDA ITEM NO. 4.a

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 8, 2023

SUBMITTED BY: Corey Fortin, City Administration

ITEM TYPE: Presentation

AGENDA SECTION: PRESENTATIONS

SUBJECT: Presentation by Fawley Bryant and Willis Smith on Fire Station #2 - Architectural Renderings and Projected Costs

SUGGESTED ACTION: Motion to direct City Administrator to proceed with RFQ for the continued preconstruction design services with renderings and projected costs on Fire Station #2.

Is this item Quasijudicial?
No

Does this item require a public hearing?
No

EXPLANATION:
N/A

FINANCIAL IMPACT:
N/A

ATTORNEY REVIEW/RECOMMENDATION:
N/A

SUGGESTED MOTION:
Motion to direct City Administrator to proceed with RFQ for the continued preconstruction design services with renderings and projected costs on Fire Station #2.

ATTACHMENTS:

AGENDA ITEM NO. 6.a

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 8, 2023

SUBMITTED BY: Tammy Winton-Spearman, Administrative Services

ITEM TYPE: Contract

AGENDA SECTION: CONSENT AGENDA

SUBJECT: Contract for RFP 23-001 Agent of Record for Employee Benefits Program

SUGGESTED ACTION: Approve contract with Brown & Brown of Florida, Inc. for RFP 23-001 Agent of Record for Employee Benefits Program.

Is this item Quasijudicial?
No

Does this item require a public hearing?
No

EXPLANATION:
Agent of Record for Employee Benefits Program contract approval.

RFP 23-001 Agent of Record for Employee Benefits Program was posted to DemandStar.com on November 9, 2022. On Monday, December 19, 2022, two sealed proposals were received and opened in response to the Request for Proposal. The proposals were presented to the Evaluation Committee for evaluating and scoring. During the review process by the Evaluation Committee, each vendor was given an evaluation score based on their submittal and then a ranking based on their presentation and interview. Based on the total points awarded and interview ranking received Brown & Brown of Florida, Inc. was selected for recommendation for award and Council approved the award at the February 22, 2023 City Council meeting.

FINANCIAL IMPACT:
Funds are budgeted in the Human Resources Department's budget.

ATTORNEY REVIEW/RECOMMENDATION:

City Attorney, Scott Rudacille prepared contract for approval.

SUGGESTED MOTION:
Motion to approve the contract with Brown & Brown of Florida, Inc.

ATTACHMENTS:
Brown & Brown of Florida Contract

CONTRACT FOR AGENT OF RECORD FOR EMPLOYEE BENEFITS PROGRAM

THIS CONTRACT is made and entered into as of the _____ day of _____, 2023, by and between THE CITY OF BRADENTON, a Florida municipality, hereinafter referred to as the "City" and BROWN & BROWN OF FLORIDA, INC., a Florida corporation, hereinafter referred to as "Contractor."

WITNESSETH

WHEREAS, the City issued RFP #23-001TWS (the "RFP") to procure an agent of record for employee benefits for the City;

WHEREAS, Contractor was the successful bidder;

WHEREAS, the Parties desire to enter into a contract in accordance with the terms of the RFP; and

NOW, THEREFORE, the City and the Contractor, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, do agree as follows:

A. CONTRACTOR'S SERVICES

The Contractor agrees to diligently provide all necessary labor, services, materials, equipment, tools, consumables, and skills in accordance with the RFP, all addenda to the RFP, and Contractor's response thereto, attached hereto and incorporated herein as Exhibit "A" (the "Scope of Work").

B. TERM

This Contract shall commence immediately upon execution by both the City and the Contractor. The term shall be for a period of (3) years, with the option to renew for two (2) additional one (1) year periods, upon written mutual consent of the Parties.

C. COMPENSATION AND PAYMENT OF CONTRACTOR'S SERVICE

1. The City shall pay the Contractor the total sum of Seventy-Five Thousand Dollars and 00/100 ($75,000.00) (the "Contract Sum"), payable in equal quarterly payments of $18,750.00 for the services rendered hereunder and completed in accordance with the terms and conditions of the RFP.

2. The City's performance and obligation to pay under this Contract is contingent upon an appropriation by City Council. The City shall promptly notify the Contractor if the necessary appropriation is not made.

D. ADDITIONAL SERVICES

1. No changes to this Contract or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Contractor and the City.

2. If the City requires the Contractor to perform additional services and if such services are not required as a result of error, omission or negligence of Contractor, then in such event the Contractor shall be entitled to additional compensation. The additional compensation shall be agreed upon before commencement of any additional services or changes and shall be incorporated into this Contract by written amendment. Any additional service or work performed before a written amendment to this Contract shall not be compensated by the City.

E. METHOD OF PAYMENT

1. Contractor shall submit a quarterly invoice to the City for the Scope of Work. The City shall pay the Contractor in accordance with Florida's Prompt Payment Act.

F. CONTRACTOR'S INSURANCE

If required, before performing any work pursuant to this Contract, Contractor shall procure and maintain, during the life of this Contract unless otherwise specified, insurance as specified in the RFP.

G. RESPONSIBILITIES OF THE CONTRACTOR

1. Contractor acknowledges that it is familiar with the requirements and specifications of the RFP, including any addenda, and that it will perform the services as required.

2. If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

3. Contractor agrees that it and its employees shall communicate with City employees and members of the public in a civil manner. All aspects of Contractor's performance, including complaints received from City employees or members of the public, may impact the City's decision to renew or terminate this Contract in accordance with the provisions contained herein. The City further reserves the right to suspend or debar the Contractor from consideration for award of future contracts in accordance with the City of Bradenton's Procurement Policies and Procedures if the contractor does not abide by the terms of this Section.

4. The Contractor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Contract.

5. The Contractor shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Contract which shall be available and accessible at the Contractor's offices for the purpose of inspection, audit, and copying during normal business hours by the City, or any of its authorized representatives, upon prior written notice to the Contractor. Such records shall be retained for a minimum of three (3) years after completion of the services.

H. TIMELY PERFORMANCE OF CONTRACTOR

1. The timely performance and completion of the required services is vitally important to the interest of the City.

2. The personnel assigned by the Contractor to perform the services of this Contract shall comply with the information presented in the RFP. The Contractor shall ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks. Any change or substitution to the Contractor's key personnel must receive the City's written approval before said changes or substitution can become effective.

3. The Contractor specifically agrees that all work performed under the terms and conditions of this Contract shall be completed within the time limits as set forth in the RFP and the response thereto, or as otherwise identified in the City's Purchase Order, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any cause affecting the performance of this Contract arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the parties.

I. OBLIGATIONS OF CITY

1. City shall cooperate fully with Contractor and the insurance companies with whom Contractor solicits in the performance of Contractor's obligations under this Contract.

2. City shall timely produce and complete accurate information including, but not limited to, current financial information, statements of values, loss information and any other information, necessary for the effectuation of insurance coverage at the request of Contractor. City further agrees to provide Contractor with notice of any material changes in City's business operations, risk exposures or in any other material information provided under this Contract. In addition, City shall carefully read each insurance policy issued to City in order to confirm the accuracy of the facts reflected therein and that the policy(ies) contain(s) the terms and coverages desired. City is responsible for recommending any changes to insurance policies issued to City.

3. City shall timely pay all premiums and fees.

4. City shall provide Contractor with at least ninety (90) days' notice in advance of any policy effective date in the event City intends to allow competing agents or brokers to solicit or market insurance to City.

J. TERMINATION.

The City reserves the right to terminate the Contract, at any time, with or without cause. Notwithstanding anything to the contrary, Contractor may terminate with or without cause and for any reason whatsoever, by providing fifteen (15) days written notice of termination to the City.

1. Termination for Default. Contractor acknowledges that the conditions, covenants and requirements on its part to be kept, as set forth in the contract, are material inducements to City entering into a contract. Should Contractor fail to perform any of the conditions, covenants and requirements of its part to be kept, the City Administrator shall give written notice thereof to Contractor specifying those acts to things which must occur in order to cure said default. Provided, however, if Contractor makes a good faith effort by taking steps to substantially cure the default, the City Administrator may grant Contractor additional time to cure such default as he deems warranted in his sole discretion. Should the default remain, upon expiration of the time granted to cure the same, the City Administrator may terminate the Contract, by written notice of termination, said notice specifying the time and date of termination.

2. Termination for Convenience. The performance of work under the contract may be terminated by the City Administrator in whole or in part whenever the City Administrator determines that termination is in the City's best interest. Any such termination shall be affected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under the contract is terminated and the date upon which such termination becomes effective. After receipt of a notice of termination, except as otherwise directed, the Contractor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for material, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.

3. Payment and Ownership of Documents upon Termination. In the event of termination of the Contract, the Contractor shall cease work and shall deliver to the City all documents including reports and all other data, materials prepared or obtained, by the Contractor in connection with the project, including all documents bearing the professional certification. The Contractor shall reimburse the City for any stored items that the City has previously purchased. City shall upon delivery of the aforesaid documents, pay the Contractor as full payment for its services hereunder, a sum of money equal to the percentage of the work done by Contractor and accepted as satisfactory by the City. This includes any electronic versions, such as CAD or other computer aided drafting programs.

4. Waiver. Failure of the City to take any action with respect to any breach of any term, covenant or condition contained in the Contract, or any instance of default thereunder by

the successful proposer, should not be deemed to be a waiver of any default or breach by the City.

K. DISPUTE RESOLUTION

1. The venue for any legal or judicial proceedings in connection with the enforcement or interpretation of this Contract shall be in the Twelfth Judicial Circuit in and for Manatee County, Florida, which shall have subject matter jurisdiction and personal jurisdiction over each of the parties to the Contract.

2. The parties agree to waive all rights to trial by jury for any litigation undertaken concerning this Contract.

3. This Contract and the rights and obligations of the Parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.

4. Unless otherwise agreed in writing, the Contractor shall be required to continue its services and all other obligations under this Contract during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.

L. PUBLIC RECORDS

To the extent applicable, Contractor shall comply with the requirements of Florida's Public Records laws, specifically including the following:

a. Contractor shall keep and maintain public records required by the City in order to perform the service;

b. Upon request from the City, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statutes, Chapter 119, or as otherwise provided by law;

c. City shall ensure public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City;

d. Contractor shall upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City,

upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City; and;

e. Contractor acknowledges that all information relating to the Contract are public records, as defined in Chapter 119, "Public Records" of the Florida Statutes. No information should be labeled confidential unless exempted under said laws.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:
City Clerk
Phone: (941) 932-9400
Email: Cityclerk@Cityofbradenton.com
Mailing Address: 101 Old Main Street – Bradenton, FL 34205

M. E-VERIFY

Section 448.09, Florida Statutes, makes it unlawful for any person to knowingly employ, hire, recruit, or refer, for private or public employment, an alien who is not duly authorized to work in the United States. Section 448.095, Florida Statutes, prohibits public employers, contractors, and subcontractors from entering into a contract unless each party to the contract registers and uses E-Verify. The Contractor hereby represents that it is in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes. The Contractor further represents that it will remain in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes, during the term of this Contract. The Contractor hereby warrants that it has not had a contract terminated by a public employer for violating Section 448.095, Florida Statutes, within the year preceding the effective date of this contract. If the Contractor has a contract terminated by a public employer for any such violation during the term of this contract, it shall provide immediate notice thereof to the City.

N. MISCELLANEOUS

1. This Contract and attachments constitute the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written with respect to the subject matter. No Amendment, change or addendum to this Contract is enforceable unless agreed to in writing by both parties and incorporated into this Contract.

2. Time is of the essence with regard to each and every aspect of the Contractor's performance under this Contract.

3. The language of this Contract shall be construed, in all cases, according to its fair meaning and not for or against any party hereto.

4. The parties hereto do not intend nor shall this Contract be construed to grant any rights, privileges or interest to any third party.

5. The Contractor shall not assign any interest in this Contract and shall not transfer any interest in same (whether by assignment or novation) without the prior written consent of the City.

6. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Contract or any applicable law. If any term, condition, or covenant of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Contract shall be valid and binding on each party.

7. The parties covenant and agree that each is duly authorized to enter into and perform this Contract and those executing this Contract have all requisite power and authority to bind the parties.

8. Neither the City's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract.

9. The rights and remedies of the City provided for under this Contract are in addition to any other rights and remedies provided by law.

10. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.

11. Any notices, reports, or any other type of documentation required by this Contract shall be sufficient if sent by the parties via United States mail, postage paid, to the addresses listed below:

To Owner: City of Bradenton
Attn: Nilsa Taylor, FCLRP
101 Old Main Street
Bradenton, Florida 34205-7865

With a copy to: Blalock Walters, P.A
Attn: Scott E. Rudacille, Esquire
802 11th Street West
Bradenton, Florida 34205
srudacille@blalockwalters.com

To Contractor: Brown & Brown of Florida, Inc.
300 N Beach Street
Daytona Beach, FL 32114
Attn: Steve Farmer
Email: steve.farmer@bbrown.com

With a copy to: Brown & Brown, Inc.
300 N Beach Street
Daytona Beach, FL 32114
Attn: Legal Department

IN WITNESS WHEREOF, the parties have executed the Contract as of the date last below written.

WITNESS:

Print Name: Danielle Boyle

Signed By:

Date: 2/27/23

BROWN & BROWN OF FLORIDA, INC.

Print Name: STEVE FARMER

Signed By:

Title: EXECUTIVE VICE PRESIDENT

Date: 2/27/2023

CITY OF BRADENTON

ATTEST:

BY: _____
TAMARA MELTON
City Clerk

BY: _____
GENE BROWN
Mayor

DATE: _____

Approved as to form:

BY: _____
SCOTT E. RUDACILLE
City Attorney

EXHIBIT A

RFP #23-001TWS, Addenda, and Contractor's Response

3720378v1

AGENDA ITEM NO. 6.b

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 8, 2023

SUBMITTED BY: Tamara Melton, Clerk

ITEM TYPE: Minutes

AGENDA SECTION: CONSENT AGENDA

SUBJECT: Minutes from the February 8, 2023 City Council Meeting

SUGGESTED ACTION: Approval

Is this item Quasijudicial?
No

Does this item require a public hearing?
No

EXPLANATION:
Minutes from the February 8, 2023 City Council Meeting

ATTORNEY REVIEW/RECOMMENDATION:
N/A

SUGGESTED MOTION:
Motion to approve the minutes from the February 8, 2023 City Council meeting.

ATTACHMENTS:
2-8-2023 City Council Meeting Minutes

CITY OF BRADENTON

CITY COUNCIL MEETING MINUTES

February 8, 2023
8:30 A.M.

The City of Bradenton City Council met in the City Hall Council Chamber, 101 Old Main Street, Bradenton, Florida, at 8:30 a.m. on Wednesday, February 8, 2023.

Present: Mayor Gene Brown; Councilwoman Ward II Marianne Barnebey; Councilman Ward III Josh Cramer; Councilwoman Ward IV Lisa Gonzalez Moore; and Councilwoman Ward V Pam Coachman.

Vice Mayor Jayne Kocher was excused.

City Officials: Rob Perry, City Administrator; Christophe St. Luce, Assistant City Administrator; Melanie Bevan, Police Chief; Tim Geer, Fire Chief; Jim McLellan, Public Works & Utilities Director; Robin Singer, Planning & Community Development Director; Nilsa Taylor, Administrative Services Director; Lance Williams, Finance Director; Tamara Melton, City Clerk; and Scott Rudacille, City Attorney.

The pre-meeting invocation was led by Senior Servant Gene McIntyre with The Altar Church.

(The City does not endorse the religious beliefs of any speaker.)

PROCLAMATIONS:

100 Years of Baseball in Bradenton - 1923 to 2023

Jeff Podobnik, Pirates Vice President of Florida and Dominican Republic Operations, Jim Trdinich, Director of Player Relations and Team Historian for the Pittsburgh Pirates, and Craig Warzecha, General Manager of the Bradenton Marauders, accepted the proclamation. They then explained the history of LECOM Park, special events in the near future, and the long relationship between the City of Bradenton and the Pittsburgh Pirates.

Manatee Community Foundation 25th Anniversary Recognition Day - February 8, 2023

Susie Bowie, Manatee Community Foundation Executive Director, Jeanie Kirkpatrick, Board Chair, and Simone Peterson, Community Investment Officer, accepted the proclamation. Ms. Bowie spoke on the history of the Manatee Community Foundation and thanked the community for their support. Ms. Kirkpatrick echoed Ms. Bowie's comments then announced Ms. Bowie's departure from the Manatee Community Foundation and wished her luck in her future endeavors. Ms. Peterson concluded by explaining the Foundation's scholarship opportunities.

PRESENTATIONS:

Recognition from Community Organization for Chief Melanie Bevan

Charles and Shemika Standifer presented Melanie Bevan, Police Chief, with a service recognition on behalf of the New Manatee Broncos. Ms. Standifer said organizations such as the New Manatee

Broncos are vital to the community. Chief Bevan spoke highly of the organization and Mr. and Mrs. Standifer.

Fire Department Employee Recognition

Tim Geer, Fire Chief, along with Stacey Bailey, representing Manatee County Fire Chiefs Association, recognized the outstanding service and accomplishments of Ken Langston, Fire Marshal. Chief Geer and Mr. Bailey thanked Mr. Langston for his 44 years of service to the community and presented him with plaques. Mr. Langston thanked Council for all the opportunities during his tenure.

Mayor Brown announced Ordinance 4003 regarding vacation rentals was pulled from the agenda until a future date, yet to be determined. Because a public hearing was advertised, he asked if anyone wished to speak on the matter. No one came forward.

CITIZEN COMMENTS:

David Woodhouse, 1400 1st Avenue West. Mr. Woodhouse spoke against the possibility of selling the Manatee County Central Library property.

Ruth Beltran, 11543 Woodley Drive. Ms. Beltran voiced her concerns with a Bradenton Police Department investigation from 2019.

Bill Sanders, 2502 Riverside Drive East. Mr. Sanders voiced his concerns with the change order for the Riverwalk Extension that was approved at the January 18, 2023 City Council meeting.

Freddie Edwards, 909 3rd Avenue East, Palmetto. Mr. Edwards requested the Police Department assist him with a child custody case.

Karen Taylor, 222 12th Street West. Ms. Taylor was apprehensive about potential distractions from the downtown video board approved at the January 3, 2023 Special City Council meeting.

Rodney Jones, 213 16th Avenue West. Mr. Jones spoke about his issues with the City and the desire to have his issues reviewed. He also made allegations regarding an interaction between Councilwoman Barnebey and Ekaterini Gerakios-Siren, Executive Director of the Community Redevelopment Agency.

Lateva Brown, 908 6th Street West. Ms. Brown asked for assistance with landlord and housing issues with Bradenton Village Apartments.

Taylor Neighbors, Chief Administrative Officer with Suncoast Partnership to End Homelessness, thanked Council for their updates to Ordinance 4008 at the January 18, 2023 City Council meeting. She spoke in favor of The Salvation Army request to permit a reallocation of space on their property.

Ekaterini Gerakios-Siren, City of Bradenton Community Redevelopment Executive Director. Because of Mr. Jones' allegations during Citizen Comment, Ms. Gerakios-Siren explained she had never spoken to Mr. Jones and was confused as to why she was mentioned.

To address concerns from Ms. Taylor, Rob Perry, City Administrator, explained the video board would not operate in dynamic mode unless there is an event downtown with street closures. When there is not a special event, he continued, the board would only be used for directional signage.

The City Council meeting was recessed at 9:33 a.m. and reconvened at 9:38 a.m.

CONSENT AGENDA:

a) Administrative Services: Recommendation for Award for RFP 23-001 Agent of Record for Employee Benefits Program
b) City Administration: Memorandum of Understanding to Cease Operations with Bird Rides, Inc.
c) Clerk: January 3, 2023 Special Meeting Minutes
d) Clerk: January 25, 2023 Special Meeting Minutes
e) Clerk: Resolution 23-7: Correcting Scrivener's Error
f) Community Redevelopment Agency: Astoria on 9th - Legal Documents
g) Fire: Federal Subaward and Grant Agreement for DR-4673 Hurricane Ian
h) Planning & Community Development: e-Plansoft (Electronic Plans Review Platform)
i) Public Works & Utilities: Amendment to Piggyback 20-01KC-EX2 with Insituform Technologies, LLC
j) Public Works & Utilities: Budget Adjustment BA23-3
k) Public Works & Utilities: Piggyback PB 21-01KC-EX1 with Bearing Point Construction
l) Public Works & Utilities: Piggyback PB23-007KC with Gator Grading and Paving
m) Public Works & Utilities: Water Tank Lease Agreement Amendment

Item f was removed by staff for further discussion.

MOTION TO APPROVE CONSENT THE AGENDA ITEMS A-E AND G-M was made by Councilwoman Coachman and seconded by Councilwoman Barnebey. Motion passed 4-0. Vice Mayor Kocher was excused.

Ms. Gerakios-Siren explained there was a typographic error on the agenda memorandum for the suggested motion. Ms. Siren said should Council approve the documentation, the suggested motion should be, "Motion to approve the attached legal documents and authorize the Mayor and City Administrator to execute all necessary documents and paperwork."

MOTION TO APPROVE ITEM F WITH THE AMENDED RECOMMENDED MOTION BY STAFF was made by Councilwoman Barnebey and seconded by Councilman Cramer. Motion passed 4-0. Vice Mayor Kocher was excused.

BUSINESS/ADVERTISING, PETITIONS, HEARINGS & COMMUNICATIONS:

Tamara Melton, City Clerk, administered the oath to anyone wishing to speak during the following public hearing.

Quasi-Judicial

Resolution 23-13 – SECOND READING AND PUBLIC HEARING

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BRADENTON, FLORIDA DESIGNATING A BROWNFIELD AREA TO BE CALLED THE RIVERVIEW6 GREEN REUSE AREA WITHIN THE CITY FOR PROPERTY LOCATED AT 813 6TH AVENUE WEST, FOLIO NUMBERS 3269800003, 3269900001, 3270000007, 3270100005, 3270200003, 3270300001, 3270400009, 3270500006, AND 3270600004 OF APPROXIMATELY 1.466 ACRES (THE "BROWNFIELD AREA") FOR THE PURPOSE OF

ENVIRONMENTAL SITE REHABILITATION AND ECONOMIC REDEVELOPMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Greg DeLong, Assistant Planning and Community Development Director, explained the Housing Trust Group (HTG) inquired about placing a Brownfield designation on the property located at 813 6th Avenue West. He added the City is a pass-through and the State of Florida would have final say.

Brett Brumand, Associate Attorney, with the Goldstein Environmental Law Firm and representative for the applicant approached the podium. He requested Council approve Resolution 23-13 to create the Green Reuse Area for a collection of parcels located generally at 813 6th Avenue West, pursuant to Florida's Brownfields Redevelopment Act.

Attorney Brumand provided an overview of the proposed 80-unit affordable housing development serving working families earning between 30% and 70% of the Area Median Income. He said the proposed building would be a single, five-story building with ground-floor retail.

Following a brief discussion, the public hearing was opened. Those who wished to speak were invited to the podium. None came.

The public hearing was closed.

MOTION TO APPROVE RESOLUTION 23-13 was made by Councilwoman Gonzalez Moore and seconded by Councilwoman Barnebey. Motion passed 4-0. Vice Mayor Kocher was excused.

Ordinance 3097 – SECOND READING AND PUBLIC HEARING

AN ORDINANCE OF THE CITY OF BRADENTON, FLORIDA, AMENDING CHAPTER 2, ARTICLE V, SECTION 2-236 OF THE CODE OF ORDINANCES OF THE CITY OF BRADENTON, FLORIDA RELATING TO EXECUTION OF CONTRACTS AND DEEDS OF CONVEYANCE; AMENDING CHAPTER 2, ARTICLE V, SECTION 2-237 OF THE CODE OF ORDINANCES OF THE CITY OF BRADENTON, FLORIDA, RELATING TO REQUIREMENTS FOR COMPETITIVE BIDDING; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Perry explained the thresholds in the current Purchasing Policy make purchasing items a bit cumbersome and Ordinance 3097 would alleviate some of the restrictions.

Corey Fortin, Policy, Planning, and Procedures Administrator, explained Ordinance 3097 will allow future changes in the purchasing threshold amounts by resolution rather than changing the Code of Ordinances each time. Another change, she continued, was to give the authority for the City Administrator to enter into contracts with Council's approval.

Ms. Fortin said should Council approve Ordinance 3097, the next matter would be Resolution 23-3, which sets forth the proposed Purchasing Policy that had not been revised since 2007. Ms. Fortin presented research on several surrounding local government agencies' procurement policies and purchasing thresholds.

The public hearing was opened. Those who wished to speak were invited to the podium.

Mr. Sanders spoke in opposition of Ordinance 3097 and voiced his concerns with the proposed purchasing thresholds.

The public hearing was closed.

Mr. Perry reiterated the current Purchasing Policy had not be revised since 2007 and the accounting firm, Carr, Riggs and Ingram (CRI) that was hired for the purpose of performing a risk assessment for the City suggested the changes.

Councilwoman Gonzalez Moore noted exception with Section 2(b)(2) which gave the City Administrator the power to suspend the competitive bidding requirements during a state of emergency.

Mr. Perry provided examples of emergency procurements during Hurricane Ian and the strain it would have been on the community should staff need to wait on a City Council meeting for approval.

Councilwoman Coachman appreciated the scenarios provided by Mr. Perry and said she supported the changes.

MOTION TO APPROVE ORDINANCE 3097 was made by Councilman Cramer and seconded by Councilwoman Barnebey. Motion passed 3-1. Councilwoman Gonzalez Moore voted no and Vice Mayor Kocher was excused.

Resolution 23-3

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRADENTON, FLORIDA, MEMORIALIZING THE PURPOSE, PROCEDURES AND RESPONSIBILITIES UNDER THE CITY OF BRADENTON PURCHASING POLICY; PROVIDING FOR THE REPEAL OF RESOLUTIONS IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

Councilwoman Gonzalez Moore questioned the "good faith review" language in the policy and suggested strengthening the verbiage.

Discussion: Sole Source Procurement

MOTION TO APPROVE RESOLUTION 23-3 WITH THE PURCHASING POLICY ATTACHED was made by Councilwoman Barnebey and seconded by Councilwoman Coachman. Motion passed 4-0. Vice Mayor Kocher was excused.

NEW BUSINESS BY DEPARTMENT HEADS, CITY ATTORNEY AND COUNCIL:

Bloomberg Philanthropies Public Art Challenge

Ms. Gerakios-Siren explained The Bloomberg Philanthropies Public Art Challenge invites mayors of U.S. cities to apply for up to $1 million in funding to create temporary public art projects that address important civic issues.

Jean Farmer, Public Art Coordinator, explained more about the Challenge and invited Jeramiah Bowman with the Manatee County School District to the podium. Mr. Bowman relayed his excitement for the partnership with the City on this project.

MOTION TO APPROVE SUPPORTING THE BLOOMBERG PHILANTHROPIES PUBLIC ART CHALLENGE was made by Councilwoman Coachman and seconded by Councilwoman Barnebey. Motion passed 4-0. Vice Mayor Kocher was excused.

Exterior Hoarder Properties

Robin Singer, Planning & Community Development Director, explained some residential properties with exterior hoarding issues cannot be foreclosed because the properties are homesteaded. After speaking with Attorney Rudacille, she continued, bringing suit against the homeowners may be the best way to solve the situation.

MOTION TO SUPPORT CODE ENFORCEMENT'S EFFORTS TO CONTROL EXTERIOR HOARDER PROPERTIES BY ALLOWING THE CITY ADMINISTRATOR TO PURSUE LEGAL ACTION AGAINST HOMEOWNERS OF SAME was made by Councilwoman Coachman and seconded by Councilman Cramer. Motion passed 4-0. Vice Mayor Kocher was excused.

Oyster Habitat Restoration Permitting

Jim McLellan, Public Works and Utilities Director, explained the matter before Council was a supplemental environmental project that would enhance the water quality of the general Tampa Bay area. As part of the Riverwalk project, he continued, an oyster bed revitalization was completed to a small portion of the project and this permit would expand that rehabilitation.

MOTION TO APPROVE THE KIMLEY-HORN PROPOSAL FOR THE ADDITIONAL OYSTER RESTORATION BEDS ASSOCIATED WITH THE CITY'S SUPPLEMENTAL ENVIRONMENTAL PROJECT was made by Councilwoman Gonzalez Moore and seconded by Councilwoman Coachman. Motion passed 4-0. Vice Mayor Kocher was excused.

Recommendation of Preconstruction Services with H.J. High Construction

Mr. Perry explained at the February 16, 2023 City Council workshop, he would be presenting various locations for the possible relocation of City Hall. In order to gauge the feasibility of moving to the only property with a building in place, he continued, several evaluations must be made to the building. He said the proposal before them today was with H.J. High Construction for preconstruction services on the building located at 1111 3rd Avenue West.

MOTION TO APPROVE THE CITY ADMINISTRATOR TO ENGAGE H.J. HIGH CONSTRUCTION ON BEHALF OF THE CITY TO PROVIDE PRECONSTRUCTION SERVICES FOR THE BUILDING LOCATED AT 1111 3RD AVENUE WEST was made by Councilman Cramer and seconded by Councilwoman Barnebey.

Councilwoman Gonzalez Moore cautioned voting on this item prior to the February 16, 2023 workshop where the locations would be discussed.

Following further discussion, the motion was amended to **MOTION TO APPROVE THE CITY ADMINISTRATOR TO ENGAGE H.J. HIGH CONSTRUCTION ON BEHALF OF THE CITY TO PROVIDE PRECONSTRUCTION SERVICES FOR THE BUILDING LOCATED AT 1111 3RD AVENUE WEST, CONTINGENT ON THE REMODEL PROJECT BEING AMONG THOSE SITES SUGGESTED AND CONSIDERED FOR FURTHER DEVELOPMENT.** Motion passed 4-0. Vice Mayor Kocher was excused.

Resolution 23-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRADENTON, FLORIDA, ADOPTING THE 2023 CITY WASTEWATER MASTER FACILITIES PLAN; MAKING FINDINGS; AUTHORIZING THE SUBMITTAL FOR THE CITY'S FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION STATE REVOLVING FUND LOAN REQUEST FOR PROJECT NUMBER CW-4103A AND THE 2023 CITY WASTEWATER MASTER FACILITIES PLAN; DESIGNATING THE CITY'S AUTHORIZED REPRESENTATIVE; AUTHORIZING THE EXECUTION OF APPLICABLE LOAN AGREEMENT AND RELATED DOCUMENTS; PROVIDING FOR THE ESTABLISHMENT OF PLEDGED REVENUES FOR THE REPAYMENT OF THE LOAN; PROVIDING ASSURANCES OF COMPLIANCE WITH LOAN PROGRAM REQUIREMENTS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.

Mr. McLellan explained Resolution 23-14 was to formally adopt the updated Wastewater Master Facilities Plan and provided authorization for staff to apply for a State Revolving Fund (SRF) Loan for a variety of projects associated with the City's wastewater system. He said the Wastewater Master Facilities Plan had not been updated since 2017 when a loan was approved to improve the aeration system at the Wastewater Treatment Plan.

Mr. McLellan explained the loan would fund the Wet Weather Clarifier #4, standby power/pumps for 12 lift stations, sanitary manhole and sewer pipe lining, and Wastewater Treatment Plant injection well. He said the costs for all of the aforementioned projects was estimated at $48,400,000. He said the cost would be a worst-case scenario, should other funding sources not be identified.

Mr. McLellan explained the next steps are to submit Resolution 23-14 with supporting documents for review to be considered at the next State Revolving Fund quarterly board meeting. Meanwhile, he continued, the City would continue pursing other funding sources including State and Federal grant opportunities.

Mr. Perry presented the Capital Financing Plan included in the loan application package. He explained the 15-year repayment begins in 2029.

MOTION TO APPROVE RESOLUTION 23-14 was made by Councilwoman Gonzalez Moore and seconded by Councilman Cramer. Motion passed 4-0. Vice Mayor Kocher was excused.

The City Council meeting was recessed at 11:20 a.m. and reconvened at 2:00 p.m.

UNFINISHED BUSINESS: None.

DEPARTMENT HEAD REPORTS:

Melanie Bevan, Police Chief: In regards to the Citizen Comment portion of the meeting, Chief Bevan explained recently police officers assisted Mr. Edwards regarding the custody case he mentioned. She said the officers directed Mr. Edwards to the appropriate resources.

Chief Bevan announced she was working with local policing agencies to possibly leverage funding for hiring officers.

Robin Singer, Planning & Community Development Director: Ms. Singer explained the reason Ordinance 4008 was pulled from the agenda were so that revisions could be made and then presented to Council at a future meeting.

She reminded Council a zoning in progress related to uses under the City's form-based code was approved on September 22, 2022 and is set to expire on March 13, 2023. She recommended extending the zoning in progress to a later date and said the extension would come before Council at a future meeting.

Scott Rudacille, City Attorney: Mr. Rudacille announced the Manatee County School Board requested to terminate an interlocal agreement regarding a Joint Use Park at Ballard Elementary. He explained pursuant to the Marjory Stoneman Douglas High School Public Safety Act, they are required to secure the park area and requested to terminate the agreement. He said the termination agreement would be presented to Council at the February 22, 2023 City Council meeting.

Tamara Melton, City Clerk: Ms. Melton announced the City was utilizing Granicus Peak agenda management software. She explained the public could now download agenda packets from the City's website instead of requesting staff for the information.

COUNCIL REPORTS:

Councilwoman Ward II Marianne Barnebey: Councilwoman Barnebey thanked Public Works staff for their flexibility and willingness to listen to citizens regarding upgrades at Lewis Park.

Councilwoman Barnebey said she received complaints regarding trash at the commercial property located at 32nd Street West and Manatee Avenue West. She thanked the adjacent neighbors for contacting her and said Code Enforcement staff is researching the situation.

Councilwoman Barnebey shared her condolences due to the resent passing of former Bradenton City Clerk & Treasurer, Walter Golby.

Councilwoman Barnebey announced informational meetings regarding the potential sale of City Hall would be held in Ward 2 on February 9, 2023 at 7:00 p.m. at Trinity United Methodist Church and on February 10, 2023 at 4:00 p.m. at Bradenton Christian School.

Councilman Ward III Josh Cramer: Councilman Cramer announced he was at the Public Market over the weekend and gave kudos to Jeannie Roberts, Communications Coordinator, for her community outreach regarding the potential sale of City Hall. He looked forward to hearing from the public at the community informational meetings scheduled in Ward 4.

Councilwoman Ward IV Lisa Gonzalez Moore: Councilwoman Gonzalez Moore announced the first informational meeting regarding the potential sale of City Hall would be held in Ward 4 at 5:30 p.m. at Central Café. She also looked forward to citizen input.

Councilwoman Gonzalez Moore announced the Observation Tower at the Riverwalk Expansion is open for the public to enjoy.

Councilwoman Ward V Pam Coachman: Councilwoman Coachman thanked Police Department and Public Works staff for keeping two specific parks clean and safe for the children in Ward 5.

Councilwoman Coachman stressed the importance of community input and invited everyone to attend the community informational meetings. She announced the next informational meeting regarding the potential sale of City Hall would be held in Ward 5 on February 16, 2023 at 5:30 p.m. at the 13th Avenue Dream Center.

Councilwoman Coachman concluded by wishing everyone a Happy Valentine's Day.

Mayor Gene Brown: Mayor Brown also spoke highly regarding the Observation Tower on the Riverwalk.

Mayor Brown announced the informational meetings regarding the potential sale of City Hall would be held at different times and in different locations to make it convenient for citizens to provide their input. He also stressed that Old Main Street would not be closed during the development process, should City Hall move sites.

Mayor Brown spoke highly of the Council of Governments meeting and the 100-year Anniversary Celebration that were held on February 7, 2023.

Mayor Brown was pleased to announce the eighth annual Bradenton River Regatta will be held on February 18, 2023.

Mayor Brown adjourned the City Council meeting at 2:32 p.m.

NOTE: This is not a verbatim record. An audio CD or DVD recording of the meeting is available upon request.

AGENDA ITEM NO. 6.c

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 8, 2023

SUBMITTED BY: Tamara Melton, Clerk

ITEM TYPE: Minutes

AGENDA SECTION: CONSENT AGENDA

SUBJECT: Minutes from the February 22, 2023 City Council Meeting

SUGGESTED ACTION: Approval

Is this item Quasijudicial?
No

Does this item require a public hearing?
No

EXPLANATION:
Minutes from the February 22, 2023 City Council Meeting

FINANCIAL IMPACT:
N/

ATTORNEY REVIEW/RECOMMENDATION:
N/A

SUGGESTED MOTION:
Motion to approve the minutes from the February 22, 2023 City Council meeting.

ATTACHMENTS:
2-22-2023 City Council Meeting Minutes

CITY OF BRADENTON

CITY COUNCIL MEETING MINUTES

February 22, 2023
8:30 A.M.

The City of Bradenton City Council met in the City Hall Council Chamber, 101 Old Main Street, Bradenton, Florida, at 8:30 a.m. on Wednesday, February 22, 2023.

Present: Mayor Gene Brown; Vice Mayor and Councilwoman Ward I Jayne Kocher; Councilwoman Ward II Marianne Barnebey; Councilman Ward III Josh Cramer; Councilwoman Ward IV Lisa Gonzalez Moore; and Councilwoman Ward V Pam Coachman.

City Officials: Rob Perry, City Administrator; Christophe St. Luce, Assistant City Administrator; Melanie Bevan, Police Chief; Tim Geer, Fire Chief; Jim McLellan, Public Works & Utilities Director; Robin Singer, Planning & Community Development Director; Nilsa Taylor, Administrative Services Director; Lance Williams, Finance Director; Tamara Melton, City Clerk; and Scott Rudacille, City Attorney.

The pre-meeting invocation was led by Associate Pastor Dylan Kern with Bradenton Christian Reformed Church.

(The City does not endorse the religious beliefs of any speaker.)

PROCLAMATIONS:

Black History Month – February 2023

Councilwoman Coachman presented the proclamation to Dr. Sharon Jefferson and thanked her for all she does for the community.

PRESENTATIONS:

Fire Department Employee Recognition

Tim Geer, Fire Chief, recognized the outstanding service and accomplishments of retiring Lieutenant Ernie Pena. Chief Geer thanked Mr. Pena for his 30 years of service to the City.

CITIZEN COMMENTS:

Dr. Sharon Jefferson, 713 46th Street East. Dr. Jefferson spoke on the need of affordable housing and advocated for a community center in Ward 5.

Bill Sanders, 2502 Riverside Drive East. Mr. Sanders reiterated his concerns with the change order for the Riverwalk Extension. Mr. Sanders spoke on the passing of former Planning & Community Development Director, Tim Polk.

Rodney Jones, 213 16th Avenue West. Mr. Jones spoke about his issues with the City and accused Sergeant Cruz of impersonating a Police Department supervisor.

Kimla Murrell with Exodus Community Resources thanked staff for cleaning up a lot at the corner of 11th Avenue West and 7th Street West. Ms. Murrell also thanked Rob Perry, City Administrator, for his assistance in locating computers for donation to Exodus Community Resources.

Gary Laco, 1230 50th Street East. Mr. Laco voiced concerns with horseback riding services offered on the Palma Sola Causeway and potential environmental effects.

Kurt Landefeld, 3993 Lakewood Avenue. Mr. Landefeld thanked Council and staff for organizing the community outreach meetings regarding the possible relocation of City Hall. He spoke in favor of the relocation and looked forward to the future of the community.

Towanna Johnson, 4315 7th Avenue East. Ms. Johnson requested assistance from Council regarding a property issue and inquired as to where City Hall would relocate if the property is sold.

Vice Mayor Kocher sent condolences to the family of Mr. Polk and spoke highly of him. Councilwoman Coachman echoed Vice Mayor Kocher's statements and spoke on Mr. Polk's wealth of knowledge. Mayor Brown also spoke highly about Mr. Polk and commented on how much he would be missed.

CITIZEN COMMENTS ON THE CONSENT AGENDA:

Mr. Sanders voiced concerns with the Budget Adjustments listed on the Consent Agenda.

CONSENT AGENDA:

a) Administrative Services: Resolution 23-19: Revision to the City of Bradenton Employee Handbook Section 4.3
b) Clerk: City Council Meeting Minutes from the January 18, 2023 meeting
c) Information Technology: Budget Adjustment BA23-6
d) Legal: Termination of Interlocal Agreement regarding the Joint Use Park at Ballard Elementary School
e) Legislative: Special Event Application - Bradenton Summer Market
f) Legislative: Special Event Application - Juneteenth Celebration Parade
g) Public Works & Utilities: Budget Adjustment BA23-4
h) Public Works & Utilities: Budget Adjustment BA23-5
i) Administrative Services: Rejection of Proposal for Management Analyst – RFP 23-004TWS

Councilwoman Gonzalez Moore requested to pull Consent Agenda Items g and h. Vice Mayor Kocher requested to pull Item e.

MOTION TO APPROVE CONSENT AGENDA ITEMS A-D, F AND I was made by Vice Mayor Kocher and seconded by Councilwoman Coachman. Motion passed 5-0.

In reference to Item e, Vice Mayor Kocher requested the Bradenton Summer Market be held weekly instead of monthly because of the seasonal Public Market's current success. Andrea Knies, Director of Communications and Community Engagement with Realize Bradenton, approached the podium. Ms. Knies said the vendors of the Public Market were polled and they requested to not have the Summer Market every week on the outset. Realize Bradenton Executive Director Karen Corbin said their staff would take Vice Mayor Kocher's suggestions back to the vendors.

MOTION TO APPROVE CONSENT AGENDA ITEM E was made by Vice Mayor Kocher and seconded by Councilwoman Barnebey. Motion passed 5-0.

Councilwoman Gonzalez Moore noted Budget Adjustment BA23-5 had a typographical error.

Jim McLellan, Public Works & Utilities Director, explained Budget Adjustment BA23-5 would move funds from one account to the Project Account to cover the cost associated with the final phase of the Riverwalk. He said this adjustment was the result of the change order approved at the February 8, 2023 City Council meeting.

Discussion: History of the Riverwalk development.

Councilwoman Barnebey noted also included in Budget Adjustment BA23-5 were funds to complete the replacement of the storm system on Riverview Boulevard West and to establish an account for the Ironwood Community Water Main Replacement.

MOTION TO APPROVE CONSENT AGENDA ITEMS G AND H FOLLOWING THE CORRECTION OF THE SCRIVENER'S ERROR IN BUDGET ADJUSTMENT BA23-5 was made by Councilwoman Gonzalez Moore and seconded by Councilwoman Coachman. Motion passed 5-0.

BUSINESS/ADVERTISING, PETITIONS, HEARINGS & COMMUNICATIONS: None.

NEW BUSINESS BY DEPARTMENT HEADS, CITY ATTORNEY AND COUNCIL:

a) Public Works & Utilities: Resolution 23-18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRADENTON, FLORIDA, APPROVING A STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION MAINTENANCE AGREEMENT FOR LANDSCAPE AND IRRIGATION IMPROVEMENTS ASSOCIATED WITH THE CITY'S RIVERWALK EXTENSION ALONG SR64 WESTBOUND (MANATEE AVENUE E) BETWEEN 6TH STREET EAST AND 9TH STREET EAST; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND TO ACT AS THE CITY'S AUTHORIZED REPRESENTATIVE UNDER THE AGREEMENT; PROVIDING FOR REPEAL OF RESOLUTIONS IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. McLellan explained Resolution 23-18 would approve an agreement with the Florida Department of Transportation (FDOT) to install landscape and irrigation along State Road 64 westbound between 6th Street East and 9th Street East. He added in order to receive a permit from FDOT, a resolution must be adopted formally approving the agreement.

MOTION TO APPROVE RESOLUTION 23-18 was made by Councilwoman Barnebey and seconded by Vice Mayor Kocher. Motion passed 5-0.

b) City Administration: Council Direction on Potential City Hall Sites

Mr. Perry announced at the February 16, 2023 City Council workshop, five potential City Hall sites were presented to Council. He requested direction as to which sites Council would prefer staff to evaluate further.

Councilwoman Gonzalez Moore said generally, her first priority was location and then existing ownership.

Vice Mayor Kocher recommended eliminating 1316 4th Avenue West and 1416 9th Street West as possible locations. She said she believed the location off 4th Avenue West is too small and building a municipal building at the location off 9th Street West does not suit what was envisioned for that area to be an entertainment district. The locations she would prefer to ask staff evaluate were 1404-1424 14th Street West, 1111 3rd Avenue West, and the corner of 6th Avenue West and 3rd Street West.

Councilwoman Gonzalez Moore agreed with Vice Mayor Kocher's comments and said while there are benefits with offering municipal services downtown, the property acquisitions required for the 4th Avenue West site may be unduly burdensome.

Councilman Cramer also agreed with Vice Mayor Kocher's statements, however, did not feel building a municipal building at the 14th Street West site would assist in redeveloping the area. Because of the development of The Met across the street, he preferred the city-owned property be sold for future private development.

Councilwoman Barnebey agreed the location off 4th Avenue West could be problematic and expensive. She also agreed developing a City Hall at the 9th Street West location did not suit their vision of the corridor becoming an entertainment district. While she was not opposed to the 6th Avenue West site or the 14th Street West site, she had reservations regarding the 3rd Avenue West site.

Councilwoman Coachman agreed that 9th Street West would not be a good location for municipal services and the 4th Avenue West location could be problematic because of all of the property acquisitions required from several owners. She wished to explore more information regarding the 6th Avenue West site and the 14th Street West site. Because the 3rd Avenue West site had a building on the property currently, Councilwoman Coachman recommended investigating the existing building thoroughly.

Mayor Brown spoke about the many community outreach meetings and the two largest concerns voiced by citizens were creating a green space downtown and potential increased traffic.

Vice Mayor Kocher inquired as to the possible effects of moving the water tower located on the 6th Avenue West site. Mr. McLellan explained he asked staff to evaluate the hydraulic system, should the water tower need to be moved or removed, in order not to impact the water flows in the downtown area. Mr. Perry added staff was also evaluating the ramifications should the cellular equipment need to be removed from the water tower.

Mr. Perry thanked Council for the proactive discussion regarding the potential sites and understood Council would need more information for this dynamic project.

MOTION TO DIRECT CITY ADMINISTRATION TO MOVE FORWARD WITH DUE DILIGENCE ON THREE POTENTIAL CITY HALL SITES: 1111 3RD AVENUE WEST; 1404-1424 14TH AVENUE WEST; AND THE PROPERTY LOCATED ON THE CORNER OF 6TH AVENUE WEST AND 3RD STREET WEST was made by Councilwoman Gonzalez Moore and seconded by Councilwoman Coachman. Motion passed 5-0.

Mr. Perry requested authorization to work with H.J. High Construction for preconstruction services on the potential sites.

MOTION TO CONTINUE WORKING WITH H.J. HIGH CONSTRUCTION, A VENDOR THAT WAS PREVIOUSLY APPROVED TO PROVIDE CONTINUING SERVICES, FOR PRECONSTRUCTION SERVICES IN ORDER TO RESEARCH AND EVALUATE THE VIABILITY OF REFURBISHING THE BUILDING LOCATED AT 1111 3RD AVENUE WEST OR BUILDING ON THE VACANT LOTS LOCATED AT 1404-1424 14TH AVENUE WEST AND THE PROPERTY LOCATED ON THE CORNER OF 6TH AVENUE WEST AND 3RD STREET WEST was made by Vice Mayor Kocher and seconded by Councilman Cramer. Motion passed 5-0.

The City Council meeting was recessed at 10:14 a.m. and reconvened at 10:32 a.m.

UNFINISHED BUSINESS:

With interest rates improving, Mr. Perry announced he would work with staff to maximize returns on the City's investments.

DEPARTMENT HEAD REPORTS:

Robin Singer, Planning & Community Development Director: Ms. Singer reminded Council a zoning in progress related to uses under the City's form-based code was approved on September 22, 2022 and is set to expire on March 13, 2023. She recommended extending the zoning in progress to a later date and would bring a resolution forward at the March 8, 2023 City Council meeting.

Jim McLellan, Public Works & Utilities Director: Mr. McLellan announced Realize Bradenton requested use of the bathrooms in the City Centre Parking Garage during the Public Market. He said Realize Bradenton staff would be responsible for unlocking and locking the bathrooms.

Melanie Bevan, Police Chief: In regards to Mr. Jones' accusation during the Citizen Comment portion of the meeting, Chief Bevan invited Sergeant Courtney Cruz to the podium. Sergeant Cruz explained she began working with the Police Department in 2015 and currently is the Detective Sergeant of the Criminal Investigation Division. Chief Bevan said Sergeant Cruz does in fact, supervise the detectives in that division.

Mr. Perry stressed the importance of Sergeant Cruz's position and gave her kudos.

Mayor Brown congratulated Chief Bevan for the First Responders Leadership Award, which she was set to receive at the Pat Glass Leadership Awards Luncheon the next day.

COUNCIL REPORTS:

Councilman Ward III Josh Cramer: Councilman Cramer spoke about the community meetings regarding the potential sale of City Hall. He thanked the public for their comments and was happy to host the meeting the night before in Chambers.

Councilwoman Ward IV Lisa Gonzalez Moore: Councilwoman Gonzalez Moore announced the next Ward 4 community meeting regarding the potential sale of City Hall would be held February 27, 2023 at noon at 3 Keys Brewery. She noted the location choices for the community meetings in Ward 4 were reflective of her desire to support local businesses.

Councilwoman Ward V Pam Coachman: Councilwoman Coachman said she was thankful the residents of Ward 5 could learn more about the potential sale of City Hall during the community

meeting on February 16, 2023 at the 13th Avenue Dream Center. Councilwoman Coachman stressed the importance of community input.

Vice Mayor and Councilwoman Ward I Jayne Kocher: Vice Mayor Kocher spoke again about the passing of Mr. Polk and said how much he will be missed.

Vice Mayor Kocher was pleased to announce she joined the Manatee Chamber of Commerce in Tallahassee last week and said they had productive meetings with the Florida Department of Transportation, Department of Environmental Protection, and legislators.

Vice Mayor Kocher thanked Bayside Community Church and Pastor Mark Childers for hosting the community meeting in Ward 1 regarding the potential sale of City Hall. She thanked the citizens for attending and giving their input.

Councilwoman Ward II Marianne Barnebey: Councilwoman Barnebey also thanked the citizens that attended the community meetings in Ward 2 regarding the potential sale of City Hall. She thanked Trinity United Methodist Church and Bradenton Christian School for their hospitality.

Councilwoman Barnebey expressed her condolences for the passing of Chuck Early and spoke highly of the family.

Councilwoman Barnebey also spoke highly of Mr. Polk and as well as former City Attorney, Alan Prather, who passed away recently.

Mayor Gene Brown: Mayor Brown sent his condolences for all the families that lost loved ones and hoped they would celebrate their memories and contributions to the community.

Mayor Brown gave kudos to the staff for all their hard work arranging the community meetings regarding the potential sale of City Hall. He also thanked citizens for their input and said overall, the meetings were very productive.

Councilman Cramer thanked everyone who organized and attended the Bradenton Area River Regatta on February 11, 2023.

Mayor Brown announced baseball spring training begins on February 25, 2023.

Mayor Brown adjourned the City Council meeting at 11:01 a.m.

NOTE: This is not a verbatim record. An audio CD or DVD recording of the meeting is available upon request.

AGENDA ITEM NO. 6.d

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 8, 2023

SUBMITTED BY: Lance Williams, Finance

ITEM TYPE: Resolution

AGENDA SECTION: CONSENT AGENDA

SUBJECT: Resolution 23-22: 2023 IRS Standard Mileage Rate

SUGGESTED ACTION: Approve Resolution 23-22

Is this item Quasijudicial?
No

Does this item require a public hearing?
No

EXPLANATION:
Update to the City's mileage reimbursement for use of personal vehicle for City business; rate from 62.5 to 65.5, in accordance with the 2023 IRS Notice 2023-03. Per City Resolution 06-09, the mileage reimbursement rate for employees that use their personal vehicles to travel on City business is to be equal to the reimbursement rate established by the IRS.

FINANCIAL IMPACT:
Increase of 3 cents per mile from the current rate of 62.5 cents per mile.

ATTORNEY REVIEW/RECOMMENDATION:
N/A

SUGGESTED MOTION:
Motion to approve Resolution 23-22.

ATTACHMENTS:
2023 Mileage Resolution 23-22

CITY OF BRADENTON

RESOLUTION NUMBER 23-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRADENTON, FLORIDA, ESTABLISHING A MILEAGE REIMBURSEMENT RATE FOR CITY OF BRADENTON EMPLOYEES USING PERSONAL VEHICLES TO TRAVEL ON CITY BUSINESS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Bradenton desires to establish reimbursement rates for employees traveling on City business; and

WHEREAS, the City Code of Ordinances provides that such rates shall be established by Resolution; and

WHEREAS, per Resolution 06-09, the mileage reimbursement rate for employees who use their personal vehicles to travel on city business is to be equal to the reimbursement rate established by the Internal Revenue Service (IRS); and

WHEREAS, the IRS has announced it will adjust its mileage reimbursement rate as of January 1, 2023;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF BRADENTON, FLORIDA:

1. The mileage reimbursement rate for employees who use their personal vehicles to travel on City business will be increased from 62.5 to 65.5 cents per mile in keeping with the rate established by the Internal Revenue Service.
2. This reimbursement rate of 65.5 cents shall take effect for all miles traveled on or after March 1, 2023.
3. This reimbursement rate remains in effect until further notice from the IRS.

PASSED AND DULY ADOPTED BY THE CITY COUNCIL FOR THE CITY OF BRADENTON, FLORIDA, WITH A QUORUM PRESENT AND VOTING ON THIS 8th DAY OF MARCH, 2023.

ATTEST:

_____
Tamara Melton
CITY CLERK

_____
Gene Brown
MAYOR

APPROVED AS TO FORM:

_____
Scott Rudacille
CITY ATTORNEY

2023 Standard Mileage Rates

Notice 2023-03

SECTION 1. PURPOSE

This notice provides the optional 2023 standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. This notice also provides the amount taxpayers must use in calculating reductions to basis for depreciation taken under the business standard mileage rate, and the maximum standard automobile cost that may be used in computing the allowance under a fixed and variable rate (FAVR) plan. Additionally, this notice provides the maximum fair market value (FMV) of employer-provided automobiles first made available to employees for personal use in calendar year 2023 for which employers may use the fleet-average valuation rule in § 1.61-21(d)(5)(v) or the vehicle cents-per-mile valuation rule in § 1.61-21(e).[1]

SECTION 2. BACKGROUND

Rev. Proc. 2019-46, 2019-49 I.R.B. 1301, provides rules for computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes, and for substantiating, under § 274(d) and § 1.274-5, the amount of

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code (Code) or the Income Tax Regulations (26 CFR part 1).

ordinary and necessary business expenses of local transportation or travel away from home. Taxpayers using the standard mileage rates must comply with Rev. Proc. 2019-46. However, a taxpayer is not required to use the substantiation methods described in Rev. Proc. 2019-46, but instead may substantiate using actual allowable expense amounts if the taxpayer maintains adequate records or other sufficient evidence.

An independent contractor conducts an annual study for the Internal Revenue Service of the fixed and variable costs of operating an automobile to determine the standard mileage rates for business, medical, and moving use reflected in this notice. The standard mileage rate for charitable use is set by § 170(i).

Longstanding regulations under § 61 provide special valuation rules for employer-provided automobiles. The amount that must be included in the employee's income and wages for the personal use of an employer-provided automobile generally is determined by reference to the automobile's FMV. If an employer chooses to use a special valuation rule, the special value is treated as the FMV of the benefit for income tax and employment tax purposes. Section 1.61-21(b)(4). Two such special valuation rules, the fleet-average valuation rule and the vehicle cents-per-mile valuation rule, are set forth in § 1.61-21(d)(5)(v) and § 1.61-21(e), respectively. These two special valuation rules are subject to limitations, including that they may be used only in connection with automobiles having values that do not exceed a maximum amount set forth in the regulations.

SECTION 3. STANDARD MILEAGE RATES

The standard mileage rate for transportation or travel expenses is 65.5 cents per mile for all miles of business use (business standard mileage rate). See section 4 of

Rev. Proc. 2019-46. However, § 11045 of Public Law 115-97, 131. Stat. 2054 (December 22, 2017), commonly known as the Tax Cuts and Jobs Act (TCJA) suspends all miscellaneous itemized deductions that are subject to the two-percent of adjusted gross income floor under § 67, including unreimbursed employee travel expenses, for taxable years beginning after December 31, 2017, and before January 1, 2026. Thus, the business standard mileage rate provided in this notice cannot be used to claim an itemized deduction for unreimbursed employee travel expenses during the suspension. Notwithstanding the foregoing suspension of miscellaneous itemized deductions, deductions for expenses that are deductible in determining adjusted gross income are not suspended. For example, members of a reserve component of the Armed Forces of the United States (Armed Forces), state or local government officials paid on a fee basis, and certain performing artists are entitled to deduct unreimbursed employee travel expenses as an adjustment to total income on line 12 of Schedule 1 of Form 1040 (2022), *U.S. Individual Income Tax Return*, not as an itemized deduction on Schedule A of Form 1040 (2022), and therefore may continue to use the business standard mileage rate.

The standard mileage rate is 14 cents per mile for use of an automobile in rendering gratuitous services to a charitable organization under § 170. See section 5 of Rev. Proc. 2019-46.

The standard mileage rate is 22 cents per mile for use of an automobile: (1) for medical care described in § 213; or (2) as part of a move for which the expenses are deductible under § 217(g). See section 5 of Rev. Proc. 2019-46. Section 11049 of the TCJA suspends the deduction for moving expenses for taxable years beginning after

December 31, 2017, and before January 1, 2026. However, the suspension does not apply to members of the Armed Forces on active duty who move pursuant to a military order and incident to a permanent change of station. Thus, except for taxpayers to whom § 217(g) applies, the standard mileage rate provided in this notice is not applicable for the use of an automobile as part of a move occurring during the suspension.

SECTION 4. BASIS REDUCTION AMOUNT

For automobiles a taxpayer uses for business purposes, the portion of the business standard mileage rate treated as depreciation is 26 cents per mile for 2019, 27 cents per mile for 2020, 26 cents per mile for 2021, 26 cents per mile for 2022, and 28 cents per mile for 2023. See section 4.04 of Rev. Proc. 2019-46.

SECTION 5. MAXIMUM STANDARD AUTOMOBILE COST

For purposes of computing the allowance under a FAVR plan, the standard automobile cost may not exceed $60,800 for automobiles (including trucks and vans). See section 6.02(6) of Rev. Proc. 2019-46.

SECTION 6. MAXIMUM VALUE OF EMPLOYER-PROVIDED AUTOMOBILES

For purposes of the fleet-average valuation rule in § 1.61-21(d)(5)(v) and the vehicle cents-per-mile valuation rule in § 1.61-21(e), the maximum FMV of automobiles (including trucks and vans) first made available to employees in calendar year 2023 is $60,800.

SECTION 7. EFFECTIVE DATE

This notice is effective for: (1) deductible transportation expenses paid or incurred on or after January 1, 2023; (2) mileage allowances or reimbursements paid to

a charitable volunteer or a member of the Armed Forces to whom § 217(g) applies: (a) on or after January 1, 2023, and (b) for transportation expenses the charitable volunteer or such member of the Armed Forces pays or incurs on or after January 1, 2023; and (3) for purposes of the maximum FMV of employer-provided automobiles for which employers may use the fleet-average valuation rule in § 1.61-21(d)(5)(v) or the vehicle cents-per-mile rule in § 1.61-21(e), automobiles first made available to employees for personal use on or after January 1, 2023.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Notice 2022-03 is superseded.

DRAFTING INFORMATION

The principal author of this notice is Christian Lagorio of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information on this notice regarding the use of an employee-provided automobile, contact Mr. Lagorio at (202) 317-7005 (not a toll-free number). For further information on this notice regarding the use of an employer-provided automobile, contact Stephanie Caden of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), at (202) 317-4774 (not a toll-free number).

AGENDA ITEM NO. 6.e

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 8, 2023

SUBMITTED BY: Mindy Piantanida, Public Works & Utilities

ITEM TYPE: Budget Adjustment

AGENDA SECTION: CONSENT AGENDA

SUBJECT: Budget Adjustment BA23-7

SUGGESTED ACTION: Approval.

Is this item Quasijudicial?
No

Does this item require a public hearing?
No

EXPLANATION:

Budget adjustment for the purpose of replacing the roof at the Shuffleboard courts at Ballard Park; purchase and installation of removable bollards for downtown; replacing playground surfaces at Riverwalk adjacent to Rossi Park; permitting and design of an oyster restoration area in the Manatee River; and pressure washing and resealing of concrete surfaces to restore the appearance of the streetscape elements.

FINANCIAL IMPACT:
The CRA will be funding $85,900 for bollards, $103,637 for replacement of playground surfaces at Riverwalk, and $27,200 for the pressure washing and resealing of the streetscape. Contingency funds in the amount of $53,139 will be utilized for the permitting and design of the oyster restoration area, and cash carryforward in the amount of $47,764 will be utilized from half cent sales tax for the roof replacement at the shuffleboard courts.

ATTORNEY REVIEW/RECOMMENDATION:
N/A

SUGGESTED MOTION:

Motion to approve Budget Adjustment BA23-7.

ATTACHMENTS:
Budget Adjustment BA23-7 and Quotes

RESOLUTION NUMBER BA23-7

A RESOLUTION OF THE CITY OF BRADENTON, FLORIDA, AMENDING/ADJUSTING THE 2022-2023 ANNUAL BUDGET; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statute 166.241(4) allows a municipality to amend (change budget total) or adjust (move funds without changing budget total) its budget, as necessary, at any time within a fiscal year; and

WHEREAS, this Statute also indicates the budget shall be changed in the same manner as its original adoption which, in the City of Bradenton's case, is by resolution; and

WHEREAS, City policy dictates that all budget amendments, and any budget adjustments greater than $10,000 must have City Council approval, adjustments less than $10,000 require approval by the City Administrator; and

WHEREAS, the City's Public Works and Utilities Department requests to amend or adjust the budget at this time, in an amount greater than $10,000, for the purpose of replacing the roof at the Shuffleboard courts at Ballard Park; purchase and installation of removable bollards for downtown; replacing playground surfaces at Riverwalk adjacent to Rossi Park; permitting and design of an oyster restoration area in the Manatee River; and pressure washing and resealing of concrete surfaces to restore the appearance of the Streetscape elements.

NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of Bradenton, as follows:

1. The attached Budget Adjustment Form has been submitted by the above-named department, and reviewed and approved by City's Finance Department.
2. Upon Council approval, the Finance Department shall process the form adjusting the City's budget, and will maintain the original documents as required.
3. Per Florida Statute 166.241(5) this adjustment will be posted on the City's website.
4. This Resolution shall become effective immediately upon its adoption.

PASSED AND DULY ADOPTED BY THE CITY COUNCIL FOR THE CITY OF BRADENTON, FLORIDA, WITH A QUORUM PRESENT AND VOTING ON THIS 8TH DAY OF MARCH, 2023.

_____

Gene Brown, Mayor

ATTEST:

_____

Tamara Melton, City Clerk

APPROVED AS TO FORM:

_____

Scott Rudacille, City Attorney

City of Bradenton Budget Adjustment Form

1. Complete and sign this Budget Adjustment form. Adjustment number available from Clerk Department.
2. Attach supporting documentation.
3. Submit to Linda Guth in the Finance Department.

Budget adjustments MUST balance

Requested by: Mindy Piantanida

For: Public Works and Utilities

Date: March 8, 2023

Budget Adjustment #: BA23-7

Amendments to the total budget, and/or adjustments over $10,000 in a single line item, require Resolution and Consent Agenda Memorandum for City Council approval.

Explanation for Adjustment: Budget adjustment to replace the roof at the Shuffleboard courts at Ballard Park; purchase and installation of removable bollards for downtown; replacement of playground surfaces at Riverwalk adjacent to Rossi Park; permitting/design of an oyster restoration area in the Manatee River; and pressure washing and resealing of concrete surfaces to restore the appearance of the Streetscape elements.

Please provide the account number and the line item description for each transaction.-
For example: Account Number: 00151940 546200
Line item description: Equipment Repair & Maintenance in Electrical Maintenance Dept.

Account Number: 30258200 563000 17812
Line item description: Shuffleboard Courts-Improvements in Half Cent Infrastructure Tax Fund

Increase (in $): 47,764 Decrease (in $):

Account Number: 30205 369150
Line item description: Cash Carryforward in Half Cent Infrastructure Tax Fund

Increase (in $): 47,764 Decrease (in $):

Account Number: 30258200 563000 18820
Line item description: City Plaza in Half Cent Infrastructure Tax Fund

Increase (in $): 107,862 Decrease (in $):

Account Number: 30203 366000 CRADT
Line item description: BCRA Contributions in Half Cent Infrastructure Tax Fund

Increase (in $): 107,862 Decrease (in $):

Account Number: 40859000 563000 PARKS
Line item description: Parks Improvements in Water-Sewer Infrastructure Fund

Increase (in $): 103,637 Decrease (in $):

Account Number: 40803 366000 CRADT
Line item description: Bradenton Downtown CRA Contributions/Donations in Water-Sewer Infrastructure Fund

Increase (in $): 103,637 Decrease (in $):

Account Number: 40859000 563000 WTRKP
Line item description: Improvements-Waterkeepers in Water-Sewer Infrastructure Fund

Increase (in $): 54,139 Decrease (in $):

Account Number: 40858100 599100
Line item description: Reserve for Contingencies in Water-Sewer Infrastructure Fund

Increase (in $): Decrease (in $): 54,139

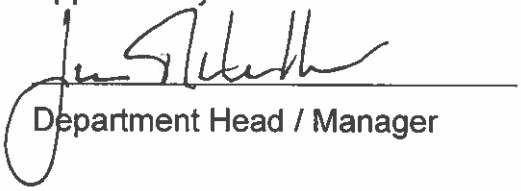
Account Number: 00157200 549000 STSCP
Line item description: Misc Charges-Streetscape in General Fund

Increase (in $): 27,270 Decrease (in $):

Account Number: 00103 366000 CRADT
Line item description: Downtown CRA Contributions in General Fund

Increase (in $): 27,270 Decrease (in $):

Approved by:



Department Head / Manager

_____

City Administrator

Approved by City Council: _____
(Date)

Posted by Accounting: _____
(Date)

EXPERIENCE MATTERS.
ADVANCED ROOFING INC
ESTABLISHED 1983

4909 West Knollwood Street, Tampa, FL 33634

866 365.6071 TEL 813.885.5811 FAX 813.884.8927

Florida's Premiere Commercial Roofing Contractor

To: Frank Bielawski **City of Bradenton Public Works** **1300 6th Street West** **Bradenton, FL 34205**	**Job Name: Shuffleboard Clubs** **Address: 1525 Ballard Park Drive** **Bradenton, FL 34205**
Date: January 25, 2023	**Reference: Office Building Roof 5000 SF:**

We are pleased to submit the following proposal for your consideration on the above referenced premises as follows. We agree to provide all labor, material, tools, equipment, and proper insurance with excess liability of eleven (11) million dollars.

SCOPE OF WORK

Shuffleboard Court Roof 5000 SF:

Roof Leak Repairs per City of Sunrise Piggyback term Contract Bid No. 19-17-12-HR: Roofing Maintenance and Repairs: Bradenton agreement # PB-20-01 MK:

1. Set up proper OSHA approved safety system in the areas where work is to be performed.
2. Supply permitting and proper NOA.
2. Remove all shingle roofing and underlayment down to plywood sheathing and discard.
3. Remove any damaged plywood up to 128 Sf with the like and re-nail to current building codes.
4. Repair any damaged truss system by sistering new 2x studs to existing truss members up to 60 LF.
5. ARI to furnish and install new 40 mil self-adhering underlayment to prepped decking.
6. Furnish and install new 24 Ga. Galv edge flashing to match existing as close as possible (color to be chosen)
7. Furnish and install new GAF 40-year shingles to match existing building roofs as close as possible.
8. All roofing related debris to be disposed in a legal manner.
9. ARI to supply a 5-year warranty.
10. Manufactures limited lifetime warranty will be issued

Quotation for the sum of …….. $47,763.80

Breakdown:

Item 30AB: Furnish all materials, labor, and equipment for existing roof tear- off, down to substrate. This item also includes all disposal costs:
5000 SF @ $3.51 per SF = …… $17,550.00
Discounted $3.00 per SF.

ITEM 31: Furnish all materials, labor, and equipment for the replacement of deteriorated wood substrates:
128 SF @ $3.80 per SF = …… $486.40

ITEM 32: Furnish all materials, labor, and equipment to install the underlayment materials. Self-Adhering underlayment polyethylene sheet. 40 Mils. Slip resisting polythene films:
5000 SF @ $1.50 per SF = …….. $7500.00
Discounted $3.38 per SF

ITEM 37: Furnish all materials, labor and equipment to install glass fiber reinforced asphalt shingles, mineral-granular surfaced self-sealing:
5000 SF @ $3.80 per SF = …… $19,000.00

ITEM 11AB: Furnish all materials, labor and equipment to install continuous 4-inches metal drip edge:
330 LF @ $9.78 Per LF = …….. $3,227.40

Discounted $6.50 per SF

” Subsequent to the execution of this Agreement, if there are any unavoidable casualties, material shortages, manufacturer or supplier mandated upcharges on materials, or any other events beyond Contractor’s control; that cause any increase in the price of materials used in the performance of the Work, then the Contract Sum shall be equitable adjusted to account for the those unforeseen costs.

Please be advised that the amount quoted in this proposal has been reduced by the amount of any applicable rebates. The contractor shall receive all rebates, in which Owner agrees to execute any documents necessary for the contractor to recover payment for same.

Our work is done in a workmanlike manner by trained, qualified mechanics using the latest technical equipment for the job. During the course of the job the progress, workmanship and housekeeping is documented and reviewed by management for quality control. As always, ADVANCED ROOFING, INC. is "Committed to Quality".

Safety and protection of the property is our concern and we take precautions to protect people and property from damage or injury during the course of the job. All work areas will be cleaned daily and equipment will be removed immediately upon completion of work.

ATTENTION PROPERTY OWNERS - DON'T JEOPARDIZE YOUR INSURANCE
We are fully and properly insured, in addition with our base coverage of 1 million, 2 million aggregate, we also carry an addition $10,000,000 in excess coverage. Proof of insurance will be sent upon request. It is in the best interest of the owner to make sure a contractor carries the amount of insurance as stated above and ask for proof.

Thank you for the opportunity to bid on this work. Should you have any questions or require any additional information, please do not hesitate to call.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements continent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance.

Authorized Signature: _____ *Gary Stevens* _____

Senior Service Estimator

NOTE: This proposal may be withdrawn by us if not accepted within Seven (7) days.
Owner is responsible for asbestos testing and related cost to remove.

Acceptance of Proposal

The undersigned as (check one) ☐ Owner ☐ *Authorized agent of Owner* hereby accepts and agrees to the prices, specifications and conditions indicated above and on the reverse side of this contract.

Accepted: ..... Signature: .....

Date: ..... Signature: .....

C-Squared CGC, Inc.
3547 53rd Ave W # 327
Bradenton Fl 34210
941-960-8114
www.c-squaredcgc.com
Quality, Integrity, Reliability.

To:	City Of BRADENTON	**Contact:**	Jean Tottii
Address:	9TH STREET EAST	**Phone:**	941-708-6300
	BRADENTON, FL 34205	**Fax:**	
Project Name:	City Of Bradenton Dowtown Bollards Additonal Locations	**Bid Number:**	23-018
Project Location:	City Of Bradenton	**Bid Date:**	2/16/2023

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
01	Maintance Of Traffic Plan	3.00	EACH	$1,000.00	$3,000.00
03	Work Zone Signs	100.00	EADY	$1.00	$100.00
08	Barricades Type III	50.00	EACH	$1.00	$50.00
016	Construction Layout	4.00	HR	$210.00	$840.00
023	Clearing And Grubbing - Asphalt Pavement	20.00	SY	$55.65	$1,113.00
027	Excavation	30.00	CY	$36.95	$1,108.50
110	Concrete 4000 PSI	15.00	CY	$550.00	$8,250.00
112	Rebar # 4	300.00	LF	$10.00	$3,000.00
171	Bollard	10.00	EACH	$450.00	$4,500.00

Total Bid Price: $21,961.50

Notes:

- Prices are good for 60 days from date of proposal.
- Any deviations from said specifications involving extra cost will be executed only upon written order and will become an extrae charge over and above this proposal. All contracted work is warranted for one year after last day of contracted work for defects of workmanship. Work damaged by others will be billed at unit rates plus applicable mobilization. Areas of work left to accommodate others will require an additional mobilization per incident. Field measurements required for final billings.
- If Performance and Payment Bond is required please add 2%.

ACCEPTED:	**CONFIRMED:**
The above prices, specifications and conditions are satisfactory and hereby accepted.	**C-Squared CGC, Inc.**
Buyer: _____	
Signature: _____	**Authorized Signature:** _____
Date of Acceptance: _____	**Estimator:**

ForeverLawn OF TAMPA BAY

Ross Peterson
452 3rd Avenue West
Bradenton, Florida 34205

Quote #5973

From **ForeverLawn of Tampa Bay**
(813) 436-9222
info@tampabay.foreverlawn.com
www.foreverlawn.com
235 W. Brandon Blvd.
#110
Brandon, FL 33511

Client Phone 9414621994

Bill To Bradenton City Hall
101 Old Main St.
Bradenton, FL 34205

Job Title Rossi Park Playground - East PG - PGG Ultra

PRODUCT / SERVICE	DESCRIPTION	QTY.	TOTAL
Playground Grass Ultra	Olive Green XP PE slit film yarn with green and tan nylon thatch, 48 oz., 1-1/2″ pile; 15-yr warranty • PRODUCT – Playground Grass Ultra - 4710sf needed for East PG - 3300sf needed for West PG	8010	$49,982.40*
Installation w/o Removal	• INSTALLATION – The professional and timely installation of the system (such as seaming tape, glue, staples, nailer boards and stakes, aggregate sub-base, etc.) . This includes installation of 3" of crushed aggregate as a base, cutting and seaming the turf, stapling the turf to the nailer boards, and brushing the turf. This pricing line item does not include removal. - 3525sf needed for East PG - 2535sf needed for West PG	6060	$19,089.00*
Removal	• SITE PREPARATION – Removal and disposal of the existing Poured in Place and other organics as well as light grading of the dirt surface. (Dumpster and haul-off is in this price.) - 3525sf needed for East PG - 2535sf needed for West PG	6060	$11,392.80*
Stone Base	- Installation of 3"- 4" of stone aggregate. - 3525sf needed for East PG - 2535sf needed for West PG	6060	$5,454.00
Tape	- Aplix 10" - 162' - 2 cases needed for East PG - 1 case needed for West PG	3	$1,179.60
Glue	- Mapei Glue Tubes - Case of 12 Tubes - 5 cases needed for East PG - 3 cases needed for West PG	8	$1,346.40
SafetyFoam Pro - 1.5"	-Safety Pad for East PG. -1.5”x48”x24” interlocking - Because of dovetail connectors, the actual coverage of each panel is 7.71 sq ft (not 8 sq ft.) (Priced per panel.)	475	$7,951.50
SafetyFoam Pro - 1"	- Safety Pad for West PG. -1”x48”x24” interlocking - Because of dovetail connectors, the actual coverage of each panel is 7.71 sq ft (not 8 sq ft.) (Priced per panel.)	362	$4,202.82

ForeverLawn OF TAMPA BAY

Ross Peterson
452 3rd Avenue West
Bradenton, Florida 34205

Quote #5973

From **ForeverLawn of Tampa Bay**
(813) 436-9222
info@tampabay.foreverlawn.com
www.foreverlawn.com
235 W. Brandon Blvd.
#110
Brandon, FL 33511

Client Phone 9414621994

Bill To Bradenton City Hall
101 Old Main St.
Bradenton, FL 34205

Job Title Rossi Park Playground - East PG - PGG Ultra

PRODUCT / SERVICE	DESCRIPTION	QTY.	TOTAL
Perimeter board	Perimeter board - Best Plus 1" x 3" x 144" black boards; 12' long; priced per Linear ft. - 400lf needed for East PG - 275lf needed for West PG	675	$3,037.50*

A deposit of $31,090.81 will be required to begin.

Subtotal	$103,636.02
Tax Exempt (0.0%)	$0.00
Total	**$103,636.02**

* Non-taxable

This proposal was prepared using drawings and/or measurements obtained by a ForeverLawn representative during a site visit on 12/13/22. Updated 1/24/23

By signing this quote you are acknowledging the following:
Payment terms: 50% non-refundable deposit prior to scheduling, 50% due upon completion of the work - unless otherwise stated in commercial subcontract or purchase order. A 10% late fee will be added to all outstanding balances after 7 days. Please make checks payable to ForeverLawn of Tampa Bay. Please include quote number on the check. A non-refundable convenience fee of 3.0% will be added for all credit card payments.

ForeverLawn OF TAMPA BAY

Ross Peterson

452 3rd Avenue West
Bradenton, Florida 34205

Quote #5973

From	**ForeverLawn of Tampa Bay** (813) 436-9222 info@tampabay.foreverlawn.com www.foreverlawn.com 235 W. Brandon Blvd. #110 Brandon, FL 33511
Client Phone	9414621994
Bill To	Bradenton City Hall 101 Old Main St. Bradenton, FL 34205
Job Title	Rossi Park Playground - East PG - PGG Ultra

Notes Continued...

All work will be done in a professional manner and workmanship is guaranteed for one year from the date of installation. The DuPont ForeverLawn Select, K9Grass, Playground Grass, GolfGreens, and SportsGrass (non-field application) products carry 15-year product warranties through the ForeverLawn Closed Loop Warranty System (CLWS). SportsGrass in a field application comes with an 8-year product and installation warranty. Xerigrass products come with a 8-year warranty. Weeds are not covered under any warranty.

Changes to the scope of the project may require changes to the proposal and pricing. Due to product pricing considerations, this quote can only be guaranteed for 30 days from the date of this proposal.

Installation lead times vary. Please let us know if there are days we should avoid for scheduling purposes, and keep in mind that scheduling is always tentative due to inclement weather and other extenuating circumstances.

The COVID-19 outbreak has caused a supply environment different from what we've experienced in the 13 years that we have been in business as an exclusive dealer of ForeverLawn products. It has caused manufacturing and shipping delays that are out of our control. ForeverLawn of Tampa Bay will not be held responsible for project delays caused by the pandemic. We can assure you that we will evaluate all options to minimize and mitigate the impact on your project. Our team is hopeful that manufacturing and distribution will return to normal in the future. Your continued patience and support are appreciated as it's our goal to service your needs as quickly and efficiently as possible.

Signature: _____ Date: _____

Quote

5 Star Property Maintenance and Pressure Washing, LLC

Phone: (850) 543-3886
Email: 5starpropertympw@gmail.com
Address: PO Box 51538
Sarasota, FL 34232

Property: City of Bradenton
Attn: Mr.Keys
6510 Anchor Loop
Bradenton, FL 34212
mkearney@northland.com

Annual Options:

Job	Description	
Pressure Washing 12th Street W	We will apply an antifungal, degreaser and soap cleaning solution with low pressure to the sidewalks and curbs on 12th Street from 1st Ave W to Manatee W. This will be followed by a fresh water pressure rinse to reduce dirt, mold, mildew, gum, etc.	$4,800.00
Pressure Wash and Seal 12th Street W	We will apply an antifungal, degreaser and soap cleaning solution with low pressure to the sidewalks and curbs on 12th Street from 1st Ave W to Manatee W. This will be followed by a fresh water pressure rinse to reduce dirt, mold, mildew, gum, etc. Sealer will be applied to the sidwalks and curbs of 12th Street from 1st Ave W to Manatee W with Sherwin Williams H&C water based urethane sealer.	$22,470.00

*See monthly options on page 2.

Quote Prepared By: 5 Star Property Maintenance & Pressure Washing, LLC
PO Box 51538, Sarasota, FL 34232

Approved By: _____

Our goal is to exceed your expectations every time!

Quote

5 Star Property Maintenance and Pressure Washing, LLC

Phone: (850) 543-3886
Email: 5starpropertympw@gmail.com
Address: PO Box 51538
Sarasota, FL 34232

Property: City of Bradenton
Attn: Mr. Keys

Monthly Washing Options:

Job	Description	Price Per
Pressure Washing 12th Street W - Monthly Clean	We will apply an antifungal, degreaser and soap cleaning solution with low pressure to the sidewalks and curbs on 12th Street from 1st Ave W to Manatee W. This will be followed by a fresh water pressure rinse to reduce dirt, mold, mildew, gum, etc.	$3,500.00
Pressure Washing 12th Street W - High Traffic Bi-Weekly Clean	We will apply an antifungal, degreaser and soap cleaning solution with low pressure to the sidewalks and curbs on 12th in high traffic areas in front of the bars and restaurants including Bricks, McCabes, Tom, Paddy, and Lost Kangaroo. This will be followed by a fresh water pressure rinse to reduce dirt, mold, mildew, gum, etc.	$720.00

* If monthly and bi-weekly washings along with the annual seal coating options are chosen, price per bi-weekly wash would be $650, the monthly washing would be $3,080, and the annual seal coat would be $20,000.

Quote Prepared By: 5 Star Property Maintenance & Pressure Washing, LLC
PO Box 51538, Sarasota, FL 34232

Approved By: _____

Our goal is to exceed your expectations every time!

AGENDA ITEM NO. 6.f

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 8, 2023

SUBMITTED BY: Jim McLellan, Public Works & Utilities

ITEM TYPE: Contract

AGENDA SECTION: CONSENT AGENDA

SUBJECT:

Continuing Services Contracts for Construction Manager at Risk (CMAR) Services

SUGGESTED ACTION:

Approval of the continuing services contracts with the six (6) selected firms.

Is this item Quasijudicial?
No

Does this item require a public hearing?
No

EXPLANATION:

RFQ 22-038TWS Construction Manager at Risk Services - CCNA was posted to DemandStar.com on June 22, 2022. On August 1, 2022 ten proposals were received in response to the Request for Qualifications. The proposals were presented to the evaluation committee for evaluating and ranking according to the Consultants Competitive Negotiation Act (CCNA). Based on the evaluations, the committee recommended the award of contracts. City Council approved the negotiation of continuing services contracts with the six firms at their October 12, 2022 meeting. Public Works and the City Attorney have coordinated with these firms and prepared standardized contracts for CMAR continuing services that may be used by the City for projects with a construction value of up to $4 million.

FINANCIAL IMPACT:
There is no financial impact associated with the continuing services contracts. Any

task authorization under these contracts will be brought before City Council for authorization.

ATTORNEY REVIEW/RECOMMENDATION:
City Attorney Rudacille reviewed.

SUGGESTED MOTION:
Motion to approve the continuing services contracts for Construction Manager at Risk services with H.J. High Construction Company, Halfacre Construction Company, NDC Construction, Tandem Construction, Wharton-Smith, Inc., and Willis A. Smith Construction, Inc. and authorize the Mayor to execute the contracts on behalf of the city.

ATTACHMENTS:
H.J. High Construction Management at Risk Services
Halfacre Contract Construction Management at Risk Services
NDC Construction Management at Risk Services
Tandem Contract Construction Management at Risk Services
Wharton Smith Contract Construction Management at Risk Services
Willis Smith Construction Management at Risk Services

AGREEMENT FOR CONSTRUCTION MANAGEMENT AT RISK CONTINUING SERVICES FOR THE CITY OF BRADENTON

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Bradenton (the "Owner"), and H.J. High Construction, registered and licensed to do business in the State of Florida (License # CGC1511171) (the "Construction Manager").

WHEREAS, Owner solicited statements of qualifications from interested construction managers for continuing construction manager "at-risk" services for the City of Bradenton for projects within the City (the "Project");

WHEREAS, Construction Manager represents that it has expertise in the type of construction management services that will be required for the Project;

WHEREAS, Owner desires Construction Manager to provide the professional construction management services requisite to the implementation of the Project, and

WHEREAS, any Project implemented under this Agreement shall be limited to repairs, renovations, modifications, alterations, and new construction projects not to exceed $4,000,000 in construction cost; and

NOW THEREFORE, the Owner and the Construction Manager, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1
GENERAL PROVISIONS

1.1 RELATIONSHIP OF PARTIES. The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect/Engineer, Construction Manager and other persons or entities employed by the Owner for the Project.

1.2 GENERAL CONDITIONS. The general conditions of the Agreement shall be the attached General Conditions of the Construction Agreement, which is incorporated herein by reference. The term "Contractor" as used in the General Conditions shall mean the Construction Manager. The term "Contract Sum" as used in the General Conditions shall mean Guaranteed Maximum Price (GMP).

ARTICLE 2
CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Services. If the Owner and Construction Manager agree, after consultation with the Architect/Engineer, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

2.1 PRECONSTRUCTION PHASE.

A. SCOPE OF SERVICES. Construction Management at Risk services to be provided during the Preconstruction Phase shall include, but not be limited to, services found in Exhibit A to the General Conditions.

B. PRELIMINARY EVALUATION. The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other. These services shall typically be based on conceptual designs up to 30-percent design drawings.

C. CONSULTATION. The Construction Manager, with the Architect/Engineer, shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect/Engineer regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

D. PRELIMINARY PROJECT SCHEDULE. When Project requirements described in Section 3.I.A have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect/Engineer's review and the Owner's approval. The Construction Manager shall obtain the Architect/Engineer's approval of the portion of the preliminary Project schedule relating to the performance of the Architect/Engineer's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect/Engineer and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price (GMP) proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer.

E. PHASED CONSTRUCTION. The Construction Manager shall make

recommendations to the Owner and Architect/Engineer regarding the phased issuance of Project Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

F. PRELIMINARY COST ESTIMATES.

1. When the Owner has sufficiently identified the Project requirements and the Architect/Engineer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2. When schematic design documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the design development documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

3. When design development documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect/Engineer and approval by the Owner. During the preparation of the construction documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

4. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer.

G. SUBCONTRACTORS AND SUPPLIERS. The Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to the Owner and Architect/Engineer for their information a list of possible Subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect/Engineer will promptly reply in writing to the Construction Manager if the Architect/Engineer or Owner know of any objection to such Subcontractor or supplier. The receipt of such list shall not require the Owner or Architect/Engineer to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it waive the right of the Owner or Architect/Engineer later to object to or reject any proposed. Subcontractors or suppliers.

H. LONG LEAD TIME ITEMS. The Construction Manager shall recommend to the Owner and Architect/Engineer a schedule for procurement of long-lead-time items which

will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's GMP proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

I. EXTENT OF RESPONSIBILITY. The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the GMP. The recommendation and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Project Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Project Plans and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect/Engineer and Owner in writing.

J. EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS. The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity programs.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME.

A. TIMING. When the Project Plans and Specifications are sufficiently complete, the Construction Manager shall propose a GMP, which shall be the sum of the estimated Cost of the Work and the Contractor's Fee.

B. FURTHER DEVELOPMENT OF PROJECT PLANS AND SPECIFICATIONS. As the Project Plans and Specifications may not be finished at the time the GMP proposal is prepared, the Construction Manager shall provide in the GMP for further development of the Project Plans and Specifications by the Architect/Engineer that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, as required, shall be incorporated by Change Order.

C. CONTINGENCY. The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.B and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

D. BASIS OF GUARANTEED MAXIMUM PRICE. The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

1. A list of the Project Plans and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the GMP proposal.

2. A list of allowances and a statement of their basis.

3. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP proposal to supplement the information contained in the Project Plans and Specifications.

4. The proposed GMP, including a statement of the estimated costs organized by trade categories, allowances, contingency, and other items and the Fee that comprise the GMP.

5. The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the construction documents issuance dates upon which the date of Substantial Completion is based.

E. MEETING OF CONSTRUCTION TEAM. The Construction Manager shall meet with the Owner and Architect/Engineer to review the GMP proposal and the written statement of its basis. In the event that the Owner or Architect/Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal, its basis, or both.

F. ACCEPTANCE. Unless the Owner accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the GMP proposal shall not be effective without written acceptance by the Construction Manager.

G. NO COSTS IN ADVANCE. Prior to the Owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

H. GMP ADDENDUM. Upon acceptance by the Owner of the GMP proposal, the GMP and its basis shall be set forth in the GMP Addendum. The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

I. REVISIONS TO PROJECT PLANS AND SPECIFICATONS. The Owner shall authorize and cause the Architect/Engineer to revise the Project Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Addendum. Such revised Project Plans and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect/Engineer and Construction Manager. The Construction Manager shall promptly notify the Architect/Engineer and Owner if such revised Project Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

J. TAXES. The GMP shall include in the Cost of the Work only those taxes which are enacted at the time the GMP is established.

2.3 CONSTRUCTION PHASE.

A. GENERAL.

1. The Construction Phase shall commence on the earlier of:

i. the owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed,

ii. or the Owner's first authorization to the Construction Manager to:

(a) award a Subcontract,

(b) undertake construction Work with the Construction Manager's own forces, or

(c) issue a purchase order for materials or equipment required for the Work.

B. ADMINISTRATION.

1. Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under Subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect/Engineer. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect/Engineer, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the GMP has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2. If the GMP has been established, and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect/Engineer (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be

accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the GMP by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the Owner.

3. Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.H and 7.1.1 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

4. The Construction Manager shall schedule and conduct a meeting at which the Owner, Architect/Engineer, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

5. Promptly after the Owner's acceptance of the GMP proposal, the Construction Manager shall prepare a schedule in accordance with Section 2.3 of the General Conditions, including the Owner's occupancy requirements.

6. The Construction Manager shall provide monthly written reports to the Owner and Architect/Engineer on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the Project Site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect/Engineer.

7. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect/Engineer at regular intervals.

2.4 PROFESSIONAL SERVICES. Sections 2.1 and 2.2 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

2.5 HAZARDOUS MATERIALS. Sections 2.4.U and 5.5 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3
OWNER'S RESPONSIBILITES

3.1 **INFORMATION AND SERVICES**.

A. GENERAL INFORMATION. The Owner shall provide full information in

a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

B. BUDGET. The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect/Engineer, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

C. STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS. In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in subsections 1 through 5, below, but shall exercise customary precautions relating to the performance of the Work.

1. Reports, surveys, drawings and tests concerning the conditions of the Project Site which are required by law.

2. Surveys describing physical characteristics, legal limitations and utility locations for the Project Site, and a written legal description of the Project Site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Project Site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

3. The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolations tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

4. Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

5. The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE. The Owner shall designate in writing its Owner's Project Representative who shall have express authority to bind the Owner

with respect to all matters requiring the Owner's approval or authorization. This Representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 5.2 of the General Conditions, the Architect/Engineer does not have such authority.

3.3 ARCHITECT/ENGINEER. The Owner shall retain an Architect/Engineer to provide basic services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in Article VI of the General Conditions. The Owner shall authorize and cause the Architect/Engineer to provide those additional services requested by the Construction Manager which must necessarily be provided by the Architect/Engineer for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect/Engineer and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect/Engineer.

3.4 LEGAL REQUIREMENTS. The Owner shall determine and advise the Architect/Engineer and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4
COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Services as follows:

4.1 COMPENSATION.

A. PRECONSTRUCTION SERVICES. For the Preconstruction Services described in Section 2.1, the Construction Manager's compensation shall be a negotiated amount.

If the Preconstruction Services are Provided as Stand Alone Services:

4.2 PAYMENTS.

A. TIMING. Subject to the requirements of Article III of the General Conditions, payments for Preconstruction Services shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

B. DUE DATES. Payments shall be made by Owner in accordance with the requirements of Section 218.735, Florida Statutes.

ARTICLE 5
COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

5.1 COMPENSATION. For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determined as follows:

The Construction Management Fee Percentage shall be _____ percent (___%) of the total Cost of the Work.

5.2 GUARANTEED MAXIMUM PRICE. The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided as the GMP in the GMP Addendum, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the GMP. Costs which would cause the GMP to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

5.3 CHANGES IN THE WORK

A. ADJUSTMENTS TO GMP. Adjustments to the GMP on account of changes in the Work subsequent to the execution of the GMP Addendum may be determined by any of the methods listed in Article V of the General Conditions.

B. "COST". In calculating adjustments to Subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the Owner and Construction Manager shall proceed in accordance with Section 5.6 of the General Conditions. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts. In calculating adjustments to the Agreement, the terms "cost"' and "costs" as used in the above-referenced General Conditions shall mean the Cost of the Work as defined in Article 6 of this Agreement.

C. CONSTRUCTION MANAGER'S FEE. If no specific provision is made in Section 5.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such that, in the aggregate, the application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

ARTICLE 6
COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

A. COST OF WORK. The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

B. LABOR COSTS.

1. Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the Project Site or, with the Owner's agreement, at off-site workshops.

2. Wages or salaries of the Construction Managers supervisory and administrative personnel when stationed at the Project Site with the Owner's agreement.

Classification	Name

(If it is Intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be Included in the Cost of the Work; such personnel shall be identified below.)

3. Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

Classification	Labor Rate ($/Hour)

4. Costs paid or incurred by the Construction Manager for taxes. insurance,

contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.B.1 through 6.1.B.3.

C. SUBCONTRACT COSTS. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the Subcontracts.

D. COSTS MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION.

1. DIRECT PURCHASE ORDER (DPO) PROCESS

a. The Construction Manager at Risk (CMAR) identifies possible tax savings in agreement with the city's Public Works' representative.
b. The CMAR requests the city's Purchasing Department for a DPO (purchase order) based on a quote for materials on the project. The purchase order is to be issued for the materials and vendor outlined on the quote provided. The city's Public Works' representative is copied on the request.
c. The city's Purchasing Department issues a purchase order to the vendor on the quote for the full amount of the quote, or a "blanket" PO.
d. The city's Purchasing Department sends all invoices to the CMAR and the city's Public Works' representative for verification. The CMAR is responsible for receiving, logging and approving all invoices form the vendor for payment and emails the request for payment to Public Works.
e. The request for payment/invoice is reviewed the city's Public Works' representative.
f. Public Works authorizes the invoice for payment with accounting.
g. The invoice billing process repeats until the DPO runs out of money or is canceled.

A single DPO can be issued for a single purchase. However, if multiple purchases are made to the same vendor, it is more efficient to do a blanket DPO.

A Certificate of Entitlement is to be issued by Purchasing for each vendor utilizing a DPO

LANGUAGE TO INCLUDE WITH EVERY DPO:

SPECIAL INSTRUCTIONS: All responsibility & contact relative to the P.O. shall be with [name of the company], as to delivery, quality, and quantity.
Original invoices shall be sent to the above named contractor who will forward to the General Contractor. Payment will be delayed if this process is not followed.

2. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

3. Costs of materials described in the preceding Section 6.1.D.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner

at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

E. COSTS OF OTHER MATERIALS AND EOUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS.

1. Costs, including transportation, installation, maintenance, dismantling and removal of materials. supplies. temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the Project Site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

2. Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers which are provided by the Construction Manager at the Project Site. whether rented from the Construction Manager or others and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item.

3. Costs of removal of debris from the Project Site, including proper and legal disposal of same.

4. Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges. telephone at the Project Site and reasonable petty cash expenses of the Project Site office.

5. That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

F. MISCELLANEOUS COSTS.

1. That portion directly attributable to this Contract of premiums for insurance and bonds.

2. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

3. Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

4. Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.H.2, reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the Project Site and reasonable petty cash expenses of the Project Site office.

5. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses; judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the GMP and provided that such royalties, fees and costs are not excluded by the Contract Documents.

6. Costs for electronic equipment and software, directly related to the Work and with the Owner's prior approval.

7. Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

8. Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

9. Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

10. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

G. EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK. The Cost of the Work shall also include costs described in Section 6.1.A which are incurred by the Construction Manager:

1. In taking action to prevent threatened damage, injury or loss in case of emergency affecting the safety of persons and property, as provided in Section 2.4.P of the General Conditions.

2. In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement or by the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or by the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers or others.

H. COSTS TO BE INCLUDED. The costs described in Sections 6.1.A through 6.1.G shall be included in the Cost of the Work notwithstanding any provisions of the General Conditions which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

6.2 COSTS NOT TO BE REIMBURSED

The Cost of the Work shall not include:

1. Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project Site office, except as specifically provided in Sections 6.1.B.2 and 6.1.B.3.

2. Expenses of the Construction Manager's principal office and offices other than the Project Site office, except as specifically provided in Section 6.1.

3. Overhead and general expenses, except as may be expressly included in Section 6.1.

4. The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

5. Rental costs of machinery and equipment, except as specifically provided in Section 6.1.E.2.

6. Except as provided in Section 6.1.H.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

7. Costs incurred in the performance of Preconstruction Services.

8. Except as provided in Section 6.1.F.10, any cost not specifically and expressly

described in Section 6.1.

9. Costs which would cause the GMP to be exceeded.

10. Costs for services performed during the Preconstruction Phase.

6.3 DISCOUNTS, REBATES AND REFUNDS

A. ACCURAL TO OWNER. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

B. DEDUCTION FROM COST OF WORK. Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.A shall be credited to the Owner as a deduction from the Cost of the Work.

6.4 ACCOUNTING RECORDS. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, in order to substantiate all costs incurred under this Agreement. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants or other Owner-authorized personnel shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGESS PAYMENTS

A. PROGRESS PAYMENTS. Subject to the requirements of Article III of the General Conditions, based upon Applications for Payment submitted to the Architect/Engineer by the Construction Manager and Certificates for Payment issued by the Architect/Engineer, the Owner shall make progress payments on account of the GMP to the Construction Manager as provided below and elsewhere in the Contract Documents.

B. PERIOD COVERED. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

C. DATE OF PAYMENT. Payments shall be made by Owner in accordance with the requirements of Section 218.735, Florida Statutes.

D. SUPPORTING DOCUMENTATION. With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect/Engineer to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

E. SCHEDULE OF VALUES. Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, unless objected to by the Architect/Engineer, shall be used as a basis for reviewing the Construction Manager's Application for Payment.

F. PERCENTAGE OF COMPLETION. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the schedule of values.

G. COMPUTATION. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 5.6 of the General Conditions, even though the GMP has not yet been adjusted by Change Order.

2. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the Project Site at a location agreed upon in writing, supported by paid receipts.

3. Add the Construction Manager's Fee, less retainage of five percent (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1. or, if

the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Construction Manager's Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

4. Subtract the aggregate of previous payments made by the Owner.

5. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.D to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner in such documentation.

6. Subtract amounts, if any, for which the Architect/Engineer has withheld or nullified a Certificate for Payment as provided in Section 3.3.C of the General Conditions.

H. SUBCONTRATOR RETAINAGE. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontracts.

I. REDUCTION IN RETAINAGE. Notwithstanding the foregoing, upon completion of at least fifty percent (50%) of the Work, as determined by the Architect/Engineer and Owner, the Owner shall reduce to two and one-half percent (2.5%) the amount of retainage withheld from the Construction Manager's Fee in each subsequent progress payment.

J. NO ADVANCE PAYMENTS. Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the Project Site.

K. RELIANCE ON INFORMATION. In taking action on the Construction Manager's Applications for Payment, the Architect/Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect/Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.D or other supporting data, that the Architect/Engineer has made exhaustive or continuous on-site inspections or that the Architect/Engineer has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner acting in the sole interest of the Owner.

7.2 FINAL PAYMENT.

A. CONDITIONS OF FINAL PAYMENT. Final payment shall be made by the Owner to the Construction Manager when (1) the Agreement has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct

nonconforming Work, as provided in Section 2.4.C of the General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner; and (3) a final Certificate for Payment has then been issued by the Architect/Engineer; such final payment shall be made by the Owner not more than thirty (30) days after the issuance of the Architect/Engineer's final Certificate for Payment, or as follows:

B. CALCULATION. The amount of the final payment shall be calculated as follows:

1. Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the GMP.

2. Subtract amounts, if any, for which the Architect/Engineer withholds, in whole or in part, a final Certificate for Payment as provided in Section 3.3.C of the General Conditions or other provisions of the Contract Documents.

3. Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner. Failing reimbursement by the Construction Manager and notwithstanding any other provisions of the Contract Documents to the contrary, Owner shall have the right to bring a direct action in the Circuit Court to recover such overpayment.

C. REVIEW. The Owner's fiscal staff will review and report in writing on the Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to the Architect/Engineer by the Construction Manager. Based upon such Cost of the Work as the Owner's fiscal staff report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.A have been met, the Architect/Engineer will, within seven days after receipt of the written report of the Owner's fiscal staff, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect/Engineer's reasons for withholding a certificate as provided in Section 3.3.C of the General Conditions.

D. ISSUANCE. If the Owner's fiscal staff report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect/Engineer. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within sixty (60) days after the Construction Manager's receipt of a copy of the Architect/Engineer's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's fiscal staff becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect/Engineer's final

Certificate for Payment.

E. ADDITIONAL REIMBURSEMENTS. It; subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2, (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8
INSURANCE AND BONDS

8.1 INSURANCE. Before performing any services, the Construction Manager shall procure and maintain, during the life of the Agreement, unless otherwise specified, the insurance listed below. The insurance policies shall be primary and written on forms acceptable to the Owner and placed with the insurance carriers approved and licensed by the State of Florida Office of Insurance Regulation and meet a minimum financial AM Best Company rating of no less than "A-Excellent: FSC VII."

The Owner, its officers, agents, and employees, shall be named as additional insureds on all policies required (excluding worker's compensation). No changes may be made to these specifications without specific prior written approval of the Owner. The Owner shall retain the right to review, at any time, coverage, form, and amount of insurance.

A. **Workers' Compensation/Employers Liability:**

Part One - There shall be no maximum limit (other than as limited by the applicable statute) for liability imposed by Florida Workers' Compensation Act or any other coverage required by the Agreement which are customarily insured under Part One of the standard Workers' Compensation Policy.

Part Two - The minimum amount of coverage required by the Agreement which are customarily insured under Part Two of the standard Workers' Compensation Policy shall be:

(Each Accident)	$100,000
(Disease-Policy Limit)	$500,000
(Disease-Each Employee)	$100,000

B. **Commercial General Liability.**

The limits are to be applicable only to services performed under the Agreement and shall be those that would be provided with the attachment

of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement (ISO Form CG 2503) a Commercial General Liability Policy with the following minimum limits.

General Aggregate:	
Products/Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (Any One Fire)	$Nil
Medical Expense (Any One Person)	$Nil

ADDITIONAL INSURED: The City of Bradenton, a political subdivision of the State of Florida shall be specifically named as additional insured on the Commercial General Liability Policy.

C. **Business Auto Policy**

Each Occurrence Bodily Injury and	
Property Damage Liability Combined	$300,000
Annual Aggregate (if applicable)	$1,000,000

ADDITIONAL INSURED: The City of Bradenton, a political subdivision of the State of Florida, shall be specifically named as additional insured on the Business Auto Policy.

D. **Certificates of Insurance and Copies of Policies**

Certificates of Insurance in triplicate evidencing the insurance coverage specified herein shall be filed with the Purchasing Division before services begin. The required certificates of insurance shall name the types of policy, policy number, date of expiration, amount of coverage, companies affording coverage, and also shall refer specifically to the Agreement. All insurance policies required herein shall be issued by companies that are authorized to do business under the laws of the State of Florida and hold an A.M. Best rating of A- or better. Insurance, as specified herein, shall remain in force and effect for the duration of the Agreement, including any warranty periods.

E. **Complete Policies**:

The entire and complete insurance policies required herein shall be provided to the Owner on request. If the initial insurance expires prior to the completion of services by the Construction Manager, renewal certificates of insurance and required copies of policies shall be furnished by the Construction Manager and delivered to the Purchasing Official thirty (30) days prior to the date of their expiration. Nothing herein shall in any manner create any liability of the Owner in connection with any claim against the

Construction Manager for labor, services, or materials, or of subcontractors; and nothing herein shall limit the liability of the Construction Manager or Construction Manager's sureties to the Owner, or to any workers, suppliers, material men or employees in relation to this Agreement.

F. By way of its execution of the Agreement, the Construction Manager:

a. Represents that Construction Manager maintains, and will maintain during the term of the Agreement, insurance coverage from responsible companies duly authorized to do business in the State of Florida and deemed acceptable to Owner; and
b. Agrees that, insurance should not be cancelled without thirty (30) days' notice to the Owner and must be endorsed to provide same. Failure of Owner to obtain and maintain proper amounts of insurance at all times as called for herein shall constitute a material breach of the Agreement, which may result in immediate termination.

G. Certification Requirements – In order for the certificate of insurance to be accepted it must comply with the following:

a. The certificate holder shall be:
The City of Bradenton, A political subdivision of the
State of Florida
101 Old Main Street
Bradenton, FL 34205-7865
Reference: RFP# _____

b. Certificate shall be mailed to:
The City of Bradenton
Attn: _____
_____
Bradenton, FL _____

8.2 PAYMENT AND PERFORMANCE BOND.

A. BOND REQUIRED. For each project assigned, the Construction Manager shall post a Payment and Performance Bond in the amount of the GMP, in a form approved by the Owner.

B. DELIVERY. The Construction Manager shall deliver the required bond to the Owner at least three days before the commencement of any Construction Phase services.

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION. During both the Preconstruction and Construction Phases, claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Article VIII of the General Conditions.

9.2 OTHER PROVISIONS. Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the General Conditions.

9.3 EXTENT OF CONTRACT. This Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. Except as provided in Section 9.13 below, if anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.4 OWNERSHIP AND USE OF DOCUMENTS. Section 10.4 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

9.5 GOVERNING LAW; VENUE. This Agreement shall be governed by the laws of the State of Florida. Venue for any petition for writ of certiorari or other court action allowed by this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida.

9.6 ASSIGNMENT. The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

9.7 SUBSTANTIAL COMPLETION DEFINED. Substantial Completion shall be defined as provided in Article I of the General Conditions. In the event a temporary certificate of occupancy or completion is issued establishing Substantial Completion, the Construction Manager shall diligently pursue the issuance of a permanent certificate of occupancy or completion.

9.8 PROJECT MEETINGS. During the Construction Phase, there shall be project meetings, at the jobsite or other location acceptable to the parties, on a regularly scheduled basis. The meetings will be attended by a representative of the Construction Manager, Architect/Engineer and Owner. These representatives shall be authorized to make decisions that are not otherwise contrary to the requirements of this Agreement.

9.9 WEATHER. During the Construction Phase, any rainfall temperatures below 32

degrees Fahrenheit or winds greater than 25 m.p.h. which actually prevents Work on a given day, shall be considered lost time and an additional day added to the Contract Time, provided no work could be done on site, and provided written notice has been contemporaneously submitted to the Owner by the Construction Manager documenting same.

9.10 SHOP DRAWINGS; CRITICAL SUBMITTALS. In consideration of the impact of timely review of submittals and shop drawings on the overall progress of the Work, it is hereby agreed that the Owner shall cause its agents and design professionals to accomplish the review of any particular "critical" submittals and/or shop drawings and return same to the Construction Manager within fourteen (14) days.

9.11 PUNCH LIST. Within 30 days after obtainment of Substantial Completion, the Owner shall generate a "punch list" of all work items requiring remedial attention by the Construction Manager. Within 5 days thereafter the Architect/Engineer shall assign a fair value to the punch list items, which sum shall be deducted from the next scheduled progress payment to the Construction Manager. Upon satisfactory completion of the punch list items, as certified by the Architect/Engineer, the previously deducted sum shall be paid to the Construction Manager.

9.12 CLOSEOUT DOCUMENTATION. Within 30 days after obtainment of Substantial Completion and before final payment, Construction Manager shall gather and deliver to Owner all warranty documentation, all manufacturer's product and warranty literature, all manuals (including parts and technical manuals), all schematics and handbooks, and all as-built drawings.

9.13 GOVERNING PROVISIONS; CONFLICTS. In the event of a conflict between this Agreement and the Specifications or as between the General Conditions and the Specifications, the Specifications shall govern.

9.14 E-VERIFY. Section 448.09, Florida Statutes, makes it unlawful for any person to knowingly employ, hire, recruit, or refer, for private or public employment, an alien who is not duly authorized to work in the United States. Section 448.095, Florida Statutes, prohibits public employers, contractors, and subcontractors from entering into a contract unless each party to the contract registers and uses E-Verify. Construction Manager hereby represents that it is in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes. Construction Manager further represents that it will remain in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes, during the term of the Agreement. Construction Manager hereby warrants that it has not been terminated by a public employer for violating Section 448.095, Florida Statutes, within the year preceding the effective date of this Agreement. If Construction Manager has a contract terminated by a public employer for any such violation during the term of this contract, it shall provide immediate notice thereof to the Owner.

Construction Manager shall be required to complete an E-Verify Affidavit attesting to compliance with Section 448.09, Florida Statutes.

9.15 INDEPENDENT CONTRACTOR. The Construction Manager acknowledges that it is functioning as an independent contractor in performing under the terms of this Agreement, and it is not acting as an employee of the Owner.

9.16 WAIVERS. Neither this Agreement nor any portion of it may be modified or waived orally. However, each party (through its governing body or properly authorized officer) shall have the right, but not the obligation, to waive, on a case-by-case basis, any right or condition herein reserved or intended for the benefit or protection of such party without being deemed or considered to have waived such right or condition for any other case, situation, or circumstance and without being deemed or considered to have waived any other right or condition. No such waiver shall be effective unless made in writing with an express and specific statement of the intent of such governing body or officer to provide such waiver.

9.17 VALIDITY. Each of the Owner and Construction Manager represents and warrants to the other its respective authority to enter into this Agreement.

9.18 COVENANT TO DEFEND. Neither the validity of this Agreement nor the validity of any portion hereof may be challenged by any party hereto, and each party hereto hereby waives any right to initiate any such challenge. Furthermore, if this Agreement or any portion hereof is challenged by a third party in any judicial, administrative, or appellate proceeding (each party hereby covenanting with the other party not to initiate, encourage, foster, promote, cooperate with, or acquiesce to such challenge), the parties hereto collectively and individually agree, at their individual sole cost and expense, to defend in good faith its validity through a final judicial determination or other resolution, unless all parties mutually agree in writing not to defend such challenge or not to appeal any decision invalidating this Agreement or any portion thereof:

9.19 DISCLAIMER OF THIRD PARTY BENEFICIARIES; SUCCESSORS AND ASSIGNS. This Agreement is solely for the benefit of the parties hereto, and no right, privilege, or cause of action shall by reason hereof accrue upon, to, or for the benefit of any third party. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, corporation, partnership, trust, private entity, agency, or other governmental entity any right, privilege, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof. This Agreement shall be binding upon, and its benefits and advantages shall inure to, the successors and assigns of the parties hereto.

9.20 HEADINGS AND CAPTIONS. The headings and captions of articles, sections, and paragraphs used this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or be taken into consideration in interpreting this Agreement.

9.21 LEGAL REFERENCES. All references to statutory sections or chapters shall be construed to include subsequent amendments to such provisions, and to refer to the successor provision of any such provision. References to "applicable law" and "general law" shall be construed to include provisions of local, state and federal law, whether established by legislative action, administrative rule or regulation, or judicial decision.

9.22 SEVERABILITY. The provisions of this Agreement are declared by the parties hereto to be severable. In the event any term or provision of this Agreement shall be held invalid by a court of competent jurisdiction, such invalid term or provision should not affect the validity

of any other term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent thereat then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

9.23 ATTORNEY'S FEES AND COSTS. In any claim dispute procedure or litigation arising from this Agreement, each party hereto shall be solely responsible for paying its attorney's fees and costs regardless of the outcome of any such procedure or litigation.

9.24 NOTICES. All notices, comments, consents, objections, approvals, waivers, and elections under this Agreement shall be in writing and shall be given only by hand delivery for which a receipt is obtained, or certified mail, prepaid with confirmation of delivery requested, or by electronic mail with delivery confirmation. All such communications shall be addressed to the applicable addressees set forth below or as any party may otherwise designate in the manner prescribed herein.

To Owner: City of Bradenton
Attn: _____
_____
Bradenton, Florida _____

With a copy to: Blalock Walters, P.A
Attn: Scott E. Rudacille, Esquire
802 11th Street West
Bradenton, Florida 34205

To Construction Manager: H. J. High Construction
Attn: Robert High
1015 W. Amelia St
Orlando, FL 32805

Notices, comments, consents, objections, approvals, waivers and elections shall be deemed given when received by the party for whom such communication is intended at such address herein specified, or such other physical address or email address as such party may have substituted by notice to the other.

9.25 PUBLIC RECORDS. To the extent applicable, the Construction Manager shall comply with the requirements of Florida's Public Records laws, specifically including the following:

A. Construction Manager shall keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the service;
B. Construction Manager shall provide the public with access to public records on the same terms and conditions that the Owner would provide and at a cost that does not

exceed the cost provided in Florida Statutes, Chapter 119, or as otherwise provided by law;

C. Construction Manager shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;

D. Construction Manager shall meet all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of Construction Manager upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential from public records disclosure requirements. All records stored electronically must be provided to Owner in a format that is compatible with Owner's information technology systems; and,

E. Construction Manager acknowledges that all information contained relating to the Agreement are public records, as defined in Chapter 119, "Public Records" of the Florida Statutes. No information should be labeled confidential unless exempted under said laws.

IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY OF BRADENTON CUSTODIAN OF PUBLIC RECORDS AT:
CITY CLERK
Phone: (941) 932-9400
Email: Cityclerk@Cityofbradenton.com
Mailing Address: 101 Old Main Street – Bradenton, FL 34205

9.26 CONFIDENTIAL SECURITY RECORDS.

A. Pursuant to Section 119.071(3), Florida Statutes, the following records (hereinafter referred to collectively as the "Confidential Security Records") are confidential and exempt from the disclosure requirements of Section 119.071(1), Florida Statutes:

1. A Security System Plan or portion thereof for any property owned by or leased to Owner or any privately owned or leased property held by Owner.

2. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by Owner.

3. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreational facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or

motel development in the possession of, submitted to Owner.

B. Construction Manager agrees that it shall not, as a result of a public records request or for any other reason disclose the contents of, or release or provide copies of the Confidential Security Records to any other party absent the express written authorization of the Owner or to comply with a court order requiring such release or disclosure. To the extent Construction Manager receives a request for such records, it shall immediately contact Owner who shall coordinate Owner's response to the request. Notwithstanding the foregoing, the Construction Manager shall:

1. Disclose or release Security System Plans to:

   a. The property owner or leaseholder; or

   b. Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual acts of terrorism, or to prosecute those persons who are responsible for such attempts or acts.

2. Disclose or release building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary and final formats, which depict the internal layout and structural elements of a building area, stadium, water treatment facility, or other structure owned or operated by Owner:

   a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

   b. To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by Owner and is contractually bound by the Construction Manager to comply with this Section; or

   c. Upon a showing of good cause before a court of competent jurisdiction.

C. For purposes of this Section, the term "Security System Plan" includes all:

1. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;

2. Threat assessments conducted by an agency or any private entity;

3. Threat response plans;

4. Emergency evacuation plans;

5. Sheltering arrangements; or

6. Manuals for security personnel, emergency equipment, or security training.

9.27 INDEMNIFICATION. The Construction Manager covenants and agrees to indemnify and save harmless the City of Bradenton, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of the Construction Manager, or any subcontractor (meaning anyone, including but not limited to consultants having a contract with the Construction Manager or a subcontractor for part of the services), or anyone directly or indirectly employed by the Construction Manager or by any subcontractor, or of anyone for whose acts the Construction Manager or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Construction Manager to indemnify, hold harmless, or defend the City of Bradenton from its own negligence. Nothing in the Agreement shall be deemed to affect the rights, privileges and immunities of the Owner to sovereign immunity under Florida law, or as set forth in Section 768.28, Florida Statutes.

ARTICLE 10
TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE.

A. RIGHT OF TERMINATION. Prior to execution by both parties of the GMP Addendum, the Owner may terminate this Agreement at any time without or without cause pursuant to Sections 14.1 and 14.2 of the General Conditions, and the Construction Manager may terminate this Agreement for any of the reasons described in Section 14.6 of the General Conditions.

B. COMPENSATION FOR PRECONSTRUCTION SERVICES. If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.A.

C. ADDITIONAL COMPENSATION FOR CONS1RUCTION SERVICES. If the Owner or Construction Manager terminates this Agreement pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.B, be paid an amount calculated as follows:

1. Take the Cost of the Work incurred by the Construction Manager.

2. Add the Construction Manager's Fee computed upon the Cost of the Work to the

date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as to Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

3. Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.C.l. To the extent that the Owner elects to take legal assignment of Subcontracts and purchase orders (including rental agreements), the Construction Manager shall as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such Subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such Subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of the GMP Addendum shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the Subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any Subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this Agreement not been terminated, the Construction Manager shall terminate such Subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE. Subsequent to execution by both parties of the GMP Addendum, the Agreement may be terminated as provided in Article 14 of the General Conditions.

A. LIMITATION ON PAYMENT; TERMINATION BY OWNER. In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.2 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.B and 10.1.C of this Agreement.

B. LIMITATION ON PAYMENT; TERMINATION BY CONSTRUCTION MANAGER. In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.6 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.B and 10.1.C above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the

Cost of the Work for Work not actually completed.

10.3 **SUSPENSION**. The Work may be suspended by the Owner as provided in Section 14.3 of the General Conditions. In such case, the term "Contract Sum" in that Section shall be understood to mean Cost of the Work.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the parties hereunto have caused this agreement to be executed on the date first above written.

Signed, sealed and delivered in the presence of:

ATTEST:

_____
Tamara Melton, City Clerk

CITY OF BRADENTON, a municipal corporation

By: _____
Gene Brown, Mayor

ATTEST:

Krystal Neville
Krystal Neville
Printed Signature

H.J. High Construction

By: Robert High
As its: President

AGREEMENT FOR CONSTRUCTION MANAGEMENT AT RISK CONTINUING SERVICES FOR THE CITY OF BRADENTON

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Bradenton (the "Owner"), and Halfacre Construction Company, registered and licensed to do business in the State of Florida (License #CGC059556) (the "Construction Manager").

WHEREAS, Owner solicited statements of qualifications from interested construction managers for continuing construction manager "at-risk" services for the City of Bradenton for projects within the City (the "Project");

WHEREAS, Construction Manager represents that it has expeltise im the type of construction management services that will be required for the Project;

WHEREAS, Owner desires Construction Manager to provide the professional construction management services requisite to the implementation of the Project, and

WHEREAS, any Project implemented under this Agreement shall be limited to repairs, renovations, modifications, alterations, and new construction projects not to exceed $4,000,000 in construction cost; and

NOW THEREFORE, the Owner and the Construction Manager, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1
GENERAL PROVISIONS

1.1 RELATIONSHIP OF PARTIES. The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect/Engineer, Construction Manager and other persons or entities employed by the Owner for the Project.

1.2 GENERAL CONDITIONS. The general conditions of the Agreement shall be the attached General Conditions of the Construction Agreement, which is incorporated herein by reference. The term "Contractor" as used in the General Conditions shall mean the Construction Manager. The term "Contract Sum" as used in the General Conditions shall mean Guaranteed Maximum Price (GMP).

ARTICLE2
CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this A11icle. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Services. If the Owner and Construction Manager agree, after consultation with the Architect/Engineer, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

2.1 PRECONSTRUCTION PHASE.

A. SCOPE OF SERVICES. Construction Management at Risk services to be provided during the Preconstruction Phase shall include, but not be limited to, services found in Exhibit A to the General Conditions.

B. PRELIMINARY EVALUATION. The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other. These services shall typically be based on conceptual designs up to 30-percent design drawings.

C. CONSULTATION. The Construction Manager, with the Architect/Engineer, shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect/Engineer regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

D. PRELIMINARY PROJECT SCHEDULE. When Project requirements described in Section 3.1.A have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect/Engineer's review and the Owner's approval. The Construction Manager shall obtain the Architect/Engineer's approval of the po1lion of the preliminary Project schedule relating to the performance of the Architect/Engineer's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect/Engineer and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price (GMP) proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing pmiions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer.

E. PHASED CONSTRUCTION. The Construction Manager shall make

recommendations to the Owner and Architect/Engineer regarding the phased issuance of Project Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of petformance, availability of labor and materials, and provisions for temporary facilities.

F. PRELIMINARY COST ESTIMATES.

1. When the Owner has sufficiently identified the Project requirements and the Architect/Engineer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2. When schematic design documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a more detailed estimate with suppo11ing data. During the preparation of the design development documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

3. When design development documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect/Engineer and approval by the Owner. During the preparation of the construction documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

4. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer.

G. SUBCONTRACTORS AND SUPPLIERS. The Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to the Owner and Architect/Engineer for their information a list of possible Subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect/Engineer will promptly reply in writing to the Construction Manager if the Architect/Engineer or Owner know of any objection to such Subcontractor or supplier. The receipt of such list shall not require the Owner or Architect/Engineer to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it waive the right of the Owner or Architect/Engineer later to object to or reject any proposed. Subcontractors or suppliers.

H. LONG LEAD TIME ITEMS. The Construction Manager shall recommend to the Owner and Architect/Engineer a schedule for procurement of long-lead-time items which

will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's GMP proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

I. EXTENT OF RESPONSIBILITY. The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the GMP. The recommendation and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascellain that the Project Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Project Plans and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect/Engineer and Owner in writing.

J. EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS. The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity programs.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME.

A. TIMING. When the Project Plans and Specifications are sufficiently complete, the Construction Manager shall propose a GMP, which shall be the sum of the estimated Cost of the Work and the Contractor's Fee.

B. FURTHER DEVELOPMENT OF PROJECT PLANS AND SPECIFICATIONS. As the Project Plans and Specifications may not be finished at the time the GMP proposal is prepared, the Construction Manager shall provide in the GMP for further development of the Project Plans and Specifications by the Architect/Engineer that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, as required, shall be incorporated by Change Order.

C. CONTINGENCY. The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.B and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

D. BASIS OF GUARANTEED MAXIMUM PRICE. The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

I. A list of the Project Plans and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the GMP proposal.

2. A list of allowances and a statement of their basis.

3. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP proposal to supplement the information contained in the Project Plans and Specifications.

4. The proposed GMP, including a statement of the estimated costs organized by trade categories, allowances, contingency, and other items and the Fee that comprise the GMP.

5. The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the construction documents issuance dates upon which the date of Substantial Completion is based.

E. MEETING OF CONSTRUCTION TEAM. The Construction Manager shall meet with the Owner and Architect/Engineer to review the GMP proposal and the written statement of its basis. In the event that the Owner or Architect/Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal, its basis, or both.

F. ACCEPTANCE. Unless the Owner accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the GMP proposal shall not be effective without written acceptance by the Construction Manager.

G. NO COSTS TN ADVANCE. Prior to the Owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as paii of the Cost of the Work, except as the Owner may specifically authorize in writing.

H. GMP ADDENDUM. Upon acceptance by the Owner of the GMP proposal, the GMP and its basis shall be set fmih in the GMP Addendum. The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

I. REVISIONS TO PROJECT PLANS AND SPECIFICATONS. The Owner shall authorize and cause the Architect/Engineer to revise the Project Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Addendum. Such revised Project Plans and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect/Engineer and Construction Manager. The Construction Manager shall promptly notify the Architect/Engineer and Owner if such revised Project Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

J. TAXES. The GMP shall include in the Cost of the Work only those taxes which are enacted at the time the GMP is established.

2.3 CONSTRUCTION PHASE.

A. GENERAL.

1. The Construction Phase shall commence on the earlier of:

i. the owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed,

ii. or the Owner's first authorization to the Construction Manager to:

(a) award a Subcontract,

(b) undeliake construction Work with the Construction Manager's own forces, or

(c) issue a purchase order for materials or equipment required for the Work.

B. ADMINISTRATION.

1. Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under Subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect/Engineer. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect/Engineer, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the GMP has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2. If the GMP has been established, and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect/Engineer (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be

accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the GMP by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the Owner.

3. Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.H and 7.1. I and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

4. The Construction Manager shall schedule and conduct a meeting at which the Owner, Architect/Engineer, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

5. Promptly after the Owner's acceptance of the GMP proposal, the Construction Manager shall prepare a schedule in accordance with Section 2.3 of the General Conditions, including the Owner's occupancy requirements.

6. The Construction Manager shall provide monthly written reports to the Owner and Architect/Engineer on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the Project Site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect/Engineer.

7. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and repmt the variances to the Owner and Architect/Engineer at regular intervals.

2.4 PROFESSIONAL SERVICES. Sections 2.1 and 2.2 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

2.5 HAZARDOUS MATERIALS. Sections 2.4.U and 5.5 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3
OWNER'S RESPONSIBILITES

3.1 **INFORMATION AND SERVICES.**

A. GENERAL INFORMATION. The Owner shall provide full information in

a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

B. BUDGET. The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect/Engineer, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

C. STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS. In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in subsections 1 through 5, below, but shall exercise customary precautions relating to the performance of the Work.

1. Reports, surveys, drawings and tests concerning the conditions of the Project Site which are required by law.

2. Surveys describing physical characteristics, legal limitations and utility locations for the Project Site, and a written legal description of the Project Site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Project Site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

3. The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolations tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

4. Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

5. The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE. The Owner shall designate in writing its Owner's Project Representative who shall have express authority to bind the Owner

with respect to all matters requiring the Owner's approval or authorization. This Representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 5.2 of the General Conditions, the Architect/Engineer does not have such authority.

3.3 ARCHITECT/ENGINEER. The Owner shall retain an Architect/Engineer to provide basic services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in Article VI of the General Conditions. The Owner shall authorize and cause the Architect/Engineer to provide those additional services requested by the Construction Manager which must necessarily be provided by the Architect/Engineer for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect/Engineer and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect/Engineer.

3.4 LEGAL REQUIREMENTS. The Owner shall determine and advise the Architect/Engineer and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4
COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Services as follows:

4.1 COMPENSATION.

A. PRECONSTRUCTION SERVICES. For the Preconstruction Services described in Section 2.1, the Construction Manager's compensation shall be a negotiated amount.

If the Preconstruction Services are Provided as Stand Alone Services:

4.2 PAYMENTS.

A. TIMING. Subject to the requirements of Article III of the General Conditions, payments for Preconstruction Services shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

B. DUE DATES. Payments shall be made by Owner in accordance with the requirements of Section 218.735, Florida Statutes.

ARTICLE 5
COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

5.1 COMPENSATION. For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in A1iicle 6 and the Construction Manager's Fee determined as follows:

The Construction Management Fee Percentage shall be ___ percent(_%) of the total Cost of the Work.

5.2 GUARANTEED MAXIMUM PRICE. The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided as the GMP in the GMP Addendum, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the GMP. Costs which would cause the GMP to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

5.3 CHANGES IN THE WORK

A. ADJUSTMENTS TO GMP. Adjustments to the GMP on account of changes in the Work subsequent to the execution of the GMP Addendum may be determined by any of the methods listed in Article V of the General Conditions.

B. "COST". In calculating adjustments to Subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the Owner and Construction Manager shall proceed in accordance with Section 5.6 of the General Conditions. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts. In calculating adjustments to the Agreement, the terms "cost'" and "costs" as used in the above-referenced General Conditions shall mean the Cost of the Work as defined in Article 6 of this Agreement.

C. CONSTRUCTION MANAGER'S FEE. 1fno specific provision is made in Section 5.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such that, in the aggregate, the application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

ARTICLE 6
COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

A. COST OF WORK. The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

B. LABOR COSTS.

1. Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the Project Site or, with the Owner's agreement, at off-site workshops.

2. Wages or salaries of the Construction Managers supervisory and administrative personnel when stationed at the Project Site with the Owner's agreement.

Classification	Name

(If it is Intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be Included in the Cost of the Work; such personnel shall be identified below.)

3. Wages and salaries of the Construction Manage'r's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

Classification	Labor Rate ($/Hour)

4. Costs paid or incurred by the Construction Manager for taxes. insurance,

contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.B.1 through 6.1.B.3.

C. SUBCONTRACT COSTS. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the Subcontracts.

D. COSTS MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION.

I. DIRECT PURCHASE ORDER (DPO) PROCESS

a. The Construction Manager at Risk (CMAR) identifies possible tax savings in agreement with the city's Public Works' representative.
b. The CMAR requests the city's Purchasing Department for a DPO (purchase order) based on a quote for materials on the project. The purchase order is to be issued for the materials and vendor outlined on the quote provided. The city's Public Works' representative is copied on the request.
c. The city's Purchasing Depatiment issues a purchase order to the vendor on the quote for the full amount of the quote, or a "blanket" PO.
d. The city's Purchasing Depatiment sends all invoices to the CMAR and the city's Public Works' representative for verification. The CMAR is responsible for receiving, logging and approving all invoices form the vendor for payment and emails the request for payment to Public Works.
e. The request for payment/invoice is reviewed the city's Public Works' representative.
f. Public Works authorizes the invoice for payment with accounting.
g. The invoice billing process repeats until the DPO runs out of money or is canceled.

A single DPO can be issued for a single purchase. However, if multiple purchases are made to the same vendor, it is more efficient to do a blanket DPO.

A Certificate of Entitlement is to be issued by Purchasing for each vendor utilizing a DPO

LANGUAGE TO INCLUDE WITH EVERY DPO:

SPECIAL INSTRUCTIONS: All responsibility & contact relative to the P.O. shall be with [name of the company], as to delive1y, quality, and quantity.
Original invoices shall be sent to the above named contractor who will forward to the General Contractor. Payment will be delayed (f this process is not followed.

2. Costs, including transp01tation, of materials and equipment incorporated or to be incorporated in the completed construction.

3. Costs of materials described in the preceding Section 6.1.D.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner

at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

E. COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS.

1. Costs, including transportation, installation, maintenance, dismantling and removal of materials. supplies. temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the Project Site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

2. Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers which are provided by the Construction Manager at the Project Site. whether rented from the Construction Manager or others and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item.

3. Costs of removal of debris from the Project Site, including proper and legal disposal of same.

4. Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges. telephone at the Project Site and reasonable petty cash expenses of the Project Site office.

5. That p01lion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

F. MISCELLANEOUS COSTS.

1. That portion directly attributable to this Contract of premiums for insurance and bonds.

2. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

3. Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

4. Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.H.2, reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the Project Site and reasonable petty cash expenses of the Project Site office.

5. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual propetiy rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses; judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the GMP and provided that such royalties, fees and costs are not excluded by the Contract Documents.

6. Costs for electronic equipment and software, directly related to the Work and with the Owner's prior approval.

7. Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

8. Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

9. Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

10. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

G. EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK. The Cost of the Work shall also include costs described in Section 6.1.A which are incurred by the Construction Manager:

1. In taking action to prevent threatened damage, injury or loss in case of emergency affecting the safety of persons and property, as provided in Section 2.4.P of the General Conditions.

2. In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement or by the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or by the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers or others.

H. COSTS TO BE INCLUDED. The costs described in Sections 6.1.A through 6.1.G shall be included in the Cost of the Work notwithstanding any provisions of the General Conditions which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

6.2 COSTS NOT TO BE REIMBURSED

The Cost of the Work shall not include:

1. Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project Site office, except as specifically provided in Sections 6.1.B.2 and 6.1.B.3.

2. Expenses of the Construction Manager's principal office and offices other than the Project Site office, except as specifically provided in Section 6.1.

3. Overhead and general expenses, except as may be expressly included in Section 6.1.

4. The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

5. Rental costs of machinery and equipment, except as specifically provided in Section 6.1.E.2.

6. Except as provided in Section 6.1.H.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

7. Costs incurred in the performance of Preconstruction Services.

8. Except as provided in Section 6.1.F.10, any cost not specifically and expressly

described in Section 6.1.

9. Costs which would cause the GMP to be exceeded.

10. Costs for services performed during the Preconstruction Phase.

6.3 DISCOUNTS, REBATES AND REFUNDS

A. ACCURAL TO OWNER. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

B. DEDUCTION FROM COST OF WORK. Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.A shall be credited to the Owner as a deduction from the Cost of the Work.

6.4 ACCOUNTING RECORDS. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, in order to substantiate all costs incurred under this Agreement. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants or other Owner-authorized personnel shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE7
CONSTRUCTION PHASE

7.1 PROGESS PAYMENTS

A. PROGRESS PAYMENTS. Subject to the requirements of Article III of the General Conditions, based upon Applications for Payment submitted to the Architect/Engineer by the Construction Manager and Certificates for Payment issued by the Architect/Engineer, the Owner shall make progress payments on account of the GMP to the Construction Manager as provided below and elsewhere in the Contract Documents.

B. PERIOD COVERED. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

C. DATE OF PAYMENT. Payments shall be made by Owner in accordance with the requirements of Section 218.735, Florida Statutes.

D. SUPPORTING DOCUMENTATION. With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect/Engineer to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

E. SCHEDULE OF VALUES. Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, unless objected to by the Architect/Engineer, shall be used as a basis for reviewing the Construction Manager's Application for Payment.

F. PERCENTAGE OF COMPLETION. Applications for Payment shall show the percentage of completion of each po1lion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that po1lion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the schedule of values.

G. COMPUTATION. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 5.6 of the General Conditions, even though the GMP has not yet been adjusted by Change Order.

2. Add that p01lion of the GMP properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the Project Site at a location agreed upon in writing, suppo1led by paid receipts.

3. Add the Construction Manager's Fee, less retainage of five percent (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1. or, if

the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Construction Manager's Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

4. Subtract the aggregate of previous payments made by the Owner.

5. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.D to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner in such documentation.

6. Subtract amounts, if any, for which the Architect/Engineer has withheld or nullified a Certificate for Payment as provided in Section 3.3.C of the General Conditions.

H. SUBCONTRATOR RETAINAGE. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontracts.

I. REDUCTION IN RETAINAGE. Notwithstanding the foregoing, upon completion of at least fifty percent (50%) of the Work, as determined by the Architect/Engineer and Owner, the Owner shall reduce to two and one-half percent (2.5%) the amount of retainage withheld from the Construction Manager's Fee in each subsequent progress payment.

J. NO ADVANCE PAYMENTS. Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the Project Site.

K. RELIANCE ON INFORMATION. In taking action on the Construction Manager's Applications for Payment, the Architect/Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect/Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.D or other supporting data, that the Architect/Engineer has made exhaustive or continuous on-site inspections or that the Architect/Engineer has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner acting in the sole interest of the Owner.

7.2 FINAL PAYMENT.

A. CONDITIONS OF FINAL PAYMENT. Final payment shall be made by the Owner to the Construction Manager when (1) the Agreement has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct

nonconforming Work, as provided in Section 2.4.C of the General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner; and (3) a final Certificate for Payment has then been issued by the Architect/Engineer; such final payment shall be made by the Owner not more than thirty (30) days after the issuance of the Architect/Engineer's final Certificate for Payment, or as follows:

B. CALCULATION. The amount of the final payment shall be calculated as follows:

1. Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the GMP.

2. Subtract amounts, if any, for which the Architect/Engineer withholds, in whole or in part, a final Certificate for Payment as provided in Section 3.3.C of the General Conditions or other provisions of the Contract Documents.

3. Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner. Failing reimbursement by the Construction Manager and notwithstanding any other provisions of the Contract Documents to the contrary, Owner shall have the right to bring a direct action in the Circuit Court to recover such overpayment.

C. REVIEW. The Owner's fiscal staff will review and report in writing on the Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to the Architect/Engineer by the Construction Manager. Based upon such Cost of the Work as the Owner's fiscal staff report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.A have been met, the Architect/Engineer will, within seven days after receipt of the written repo1i of the Owner's fiscal staff, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect/Engineer's reasons for withholding a certificate as provided in Section 3.3.C of the General Conditions.

D. ISSUANCE. If the Owner's fiscal staff repo1i the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a fmiher decision of the Architect/Engineer. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within sixty (60) days after the Construction Manager's receipt of a copy of the Architect/Engineer's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's fiscal staff becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount ce1iified in the Architect/Engineer's final

Certificate for Payment.

E. ADDITIONAL REIMBURSEMENTS. It; subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6. I and not excluded by Section 6.2, (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8
INSURANCE AND BONDS

8.1 INSURANCE. Before performing any services, the Construction Manager shall procure and maintain, during the life of the Agreement, unless otherwise specified, the insurance listed below. The insurance policies shall be primary and written on forms acceptable to the Owner and placed with the insurance carriers approved and licensed by the State of Florida Office of Insurance Regulation and meet a minimum financial AM Best Cdmpany rating of no less than "A-Excellent: FSC VII."

The Owner, its officers, agents, and employees, shall be named as additional insureds on all policies required (excluding worker's compensation). No changes may be made to these specifications without specific prior written approval of the Owner. The Owner shall retain the right to review, at any time, coverage, form, and amount of insurance.

A. **Workers' Compensation/Employers Liability:**

Part One - There shall be no maximum limit (other than as limited by the applicable statute) for liability imposed by Florida Workers' Compensation Act or any other coverage required by the Agreement which are customarily insured under Part One of the standard Workers' Compensation Policy.

Patl Two - The minimum amount of coverage required by the Agreement which are customarily insured under Part Two of the standard Workers' Compensation Policy shall be:

(Each Accident)	$100,000
(Disease-Policy Limit)	$500,000
(Disease-Each Employee)	$100,000

B. **Commercial General Liability.**

The limits are to be applicable only to services performed under the Agreement and shall be those that would be provided with the attachment

of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement (ISO Form CG 2503) a Commercial General Liability Policy with the following minimum limits.

General Aggregate:	
Products/Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (Any One Fire)	$Nil
Medical Expense (Any One Person)	$Nil

ADDITIONAL INSURED: The City of Bradenton, a political subdivision of the State of Florida shall be specifically named as additional insured on the Commercial General Liability Policy.

C. **Business Auto Policy**

Each Occurrence Bodily Injury and	
Propel1y Damage Liability Combined	$300,000
Annual Aggregate (if applicable)	$1,000,000

ADDITIONAL INSURED: The City of Bradenton, a political subdivision of the State of Florida, shall be specifically named as additional insured on the Business Auto Policy.

D. **Certificates of Insurance and Copies of Policies**

Certificates of Insurance in triplicate evidencing the insurance coverage specified herein shall be filed with the Purchasing Division before services begin. The required certificates of insurance shall name the types of policy, policy number, date of expiration, amount of coverage, companies affording coverage, and also shall refer specifically to the Agreement. All insurance policies required herein shall be issued by companies that are authorized to do business under the laws of the State of Florida and hold an A.M. Best rating of A- or better. Insurance, as specified herein, shall remain in force and effect for the duration of the Agreement, including any warranty periods.

E. **Complete Policies:**

The entire and complete insurance policies required herein shall be provided to the Owner on request. If the initial insurance expires prior to the completion of services by the Construction Manager, renewal ce11ificates of insurance and required copies of policies shall be furnished by the Construction Manager and delivered to the Purchasing Official thitiy (30) days prior to the date of their expiration. Nothing herein shall in any manner create any liability of the Owner in connection with any claim against the

Construction Manager for labor, services, or materials, or of subcontractors; and nothing herein shall limit the liability of the Construction Manager or Construction Manager's sureties to the Owner, or to any workers, suppliers, material men or employees in relation to this Agreement.

F. By way of its execution of the Agreement, the Construction Manager:

a. Represents that Construction Manager maintains, and will maintain during the term of the Agreement, insurance coverage from responsible companies duly authorized to do business in the State of Florida and deemed acceptable to Owner; and
b. Agrees that, insurance should not be cancelled without thirty (30) days' notice to the Owner and must be endorsed to provide same. Failure of Owner to obtain and maintain proper amounts of insurance at all times as called for herein shall constitute a material breach of the Agreement, which may result in immediate termination.

G. Certification Requirements - In order for the certificate of insurance to be accepted it must comply with the following:

a. The certificate holder shall be:
The City of Bradenton, A political subdivision of the
State of Florida
101 Old Main Street
Bradenton, FL 34205-7865
Reference: RFP# _____

b. Certificate shall be mailed to:
The City of Bradenton
Attn: _____
_____
Bradenton, FL _____

8.2 PAYMENT AND PERFORMANCE BOND.

A. BOND REQUIRED. For each project assigned, the Construction Manager shall post a Payment and Performance Bond in the amount of the GMP, in a form approved by the Owner.

B. DELIVERY. The Construction Manager shall deliver the required bond to the Owner at least three days before the commencement of any Construction Phase services.

ARTICLE9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION. During both the Preconstruction and Construction Phases, claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in A11icle VIII of the General Conditions.

9.2 OTHER PROVISIONS. Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the General Conditions.

9.3 EXTENT OF CONTRACT. This Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. Except as provided in Section 9.13 below, if anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.4 OWNERSHIP AND USE OF DOCUMENTS. Section 10.4 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

9.5 GOVERNING LAW; VENUE. This Agreement shall be governed by the laws of the State of Florida. Venue for any petition for writ of certiorari or other coml action allowed by this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida.

9.6 ASSIGNMENT. The Owner and Construction Manager respectively bind themselves, their pm1ners, successors, assigns and legal representatives to the other pmly hereto and to pmtners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither patty to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

9.7 SUBSTANTIAL COMPLETION DEFINED. Substantial Completion shall be defined as provided in A11icle I of the General Conditions. In the event a temporary certificate of occupancy or completion is issued establishing Substantial Completion, the Construction Manager shall diligently pursue the issuance of a permanent certificate of occupancy or completion.

9.8 PROJECT MEETINGS. During the Construction Phase, there shall be project meetings, at the jobsite or other location acceptable to the pmties, on a regularly scheduled basis. The meetings will be attended by a representative of the Construction Manager, Architect/Engineer and Owner. These representatives shall be authorized to make decisions that are not otherwise contrary to the requirements of this Agreement.

9.9 WEATHER. During the Construction Phase, any rainfall temperatures below 32

degrees Fahrenheit or winds greater than 25 m.p.h. which actually prevents Work on a given day, shall be considered lost time and an additional day added to the Contract Time, provided no work could be done on site, and provided written notice has been contemporaneously submitted to the Owner by the Construction Manager documenting same.

9.10 SHOP DRAWINGS; CRITICAL SUBMITTALS. ln consideration of the impact of timely review of submittals and shop drawings on the overall progress of the Work, it is hereby agreed that the Owner shall cause its agents and design professionals to accomplish the review of any particular "critical" submittals and/or shop drawings and return same to the Construction Manager within fourteen (14) days.

9.11 PUNCH LIST. Within 30 days after obtainment of Substantial Completion, the Owner shall generate a "punch list" of all work items requiring remedial attention by the Construction Manager. Within 5 days thereafter the Architect/Engineer shall assign a fair value to the punch list items, which sum shall be deducted from the next scheduled progress payment to the Construction Manager. Upon satisfactory completion of the punch list items, as certified by the Architect/Engineer, the previously deducted sum shall be paid to the Construction Manager.

9.12 CLOSEOUT DOCUMENTATION. Within 30 days after obtainment of Substantial Completion and before final payment, Construction Manager shall gather and deliver to Owner all warranty documentation, all manufacturer's product and warranty literature, all manuals (including paiis and technical manuals), all schematics and handbooks, and all as-built drawings.

9.13 GOVERNING PROVISIONS; CONFLICTS. In the event of a conflict between this Agreement and the Specifications or as between the General Conditions and the Specifications, the Specifications shall govern.

9.14 E-VERIFY. Section 448.09, Florida Statutes, makes it unlawful for any person to knowingly employ, hire, recruit, or refer, for private or public employment, an alien who is not duly authorized to work in the United States. Section 448.095, Florida Statutes, prohibits public employers, contractors, and subcontractors from entering into a contract unless each party to the contract registers and uses E-Verify. Construction Manager hereby represents that it is in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes. Construction Manager fmiher represents that it will remain in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes, during the term of the Agreement. Construction Manager hereby warrants that it has not been terminated by a public employer for violating Section 448.095, Florida Statutes, within the year preceding the effective date of this Agreement. If Construction Manager has a contract terminated by a public employer for any such violation during the term of this contract, it shall provide immediate notice thereof to the Owner.

Construction Manager shall be required to complete an E-Verify Affidavit attesting to compliance with Section 448.09, Florida Statutes.

9.15 INDEPENDENT CONTRACTOR. The Construction Manager acknowledges that it is functioning as an independent contractor in performing under the terms of this Agreement, and it is not acting as an employee of the Owner.

9.16 WAIVERS. Neither this Agreement nor any portion of it may be modified or waived orally. However, each party (through its governing body or properly authorized officer) shall have the right, but not the obligation, to waive, on a case-by-case basis, any right or condition herein reserved or intended for the benefit or protection of such patty without being deemed or considered to have waived such right or condition for any other case, situation, or circumstance and without being deemed or considered to have waived any other right or condition. No such waiver shall be effective unless made in writing with an express and specific statement of the intent of such governing body or officer to provide such waiver.

9.17 VALIDITY. Each of the Owner and Construction Manager represents and warrants to the other its respective authority to enter into this Agreement.

9.18 COVENANT TO DEFEND. Neither the validity of this Agreement nor the validity of any portion hereof may be challenged by any party hereto, and each patty hereto hereby waives any right to initiate any such challenge. Furthermore, if this Agreement or any portion hereof is challenged by a third party in any judicial, administrative, or appellate proceeding (each party hereby covenanting with the other patty not to initiate, encourage, foster, promote, cooperate with, or acquiesce to such challenge), the patties hereto collectively and individually agree, at their individual sole cost and expense, to defend in good faith its validity through a final judicial determination or other resolution, unless all patties mutually agree in writing not to defend such challenge or not to appeal any decision invalidating this Agreement or any po1tion thereof:

9.19 DISCLAIMER OF THIRD PARTY BENEFICIARIES; SUCCESSORS AND ASSIGNS. This Agreement is solely for the benefit of the patties hereto, and no right, privilege, or cause of action shall by reason hereof accrue upon, to, or for the benefit of any third party. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, corporation, pattnership, trust, private entity, agency, or other governmental entity any right, privilege, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof. This Agreement shall be binding upon, and its benefits and advantages shall inure to, the successors and assigns of the patties hereto.

9.20 HEADINGS AND CAPTIONS. The headings and captions of articles, sections, and paragraphs used this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or be taken into consideration in interpreting this Agreement.

9.21 LEGAL REFERENCES. All references to statutory sections or chapters shall be construed to include subsequent amendments to such provisions, and to refer to the successor provision of any such provision. References to "applicable law" and "general law" shall be construed to include provisions of local, state and federal law, whether established by legislative action, administrative rule or regulation, or judicial decision.

9.22 SEVERABILITY. The provisions of this Agreement are declared by the parties hereto to be severable. In the event any term or provision of this Agreement shall be held invalid by a comt of competent jurisdiction, such invalid term or provision should not affect the validity

of any other term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent thereat then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

9.23 ATTORNEY'S FEES AND COSTS. In any claim dispute procedure or litigation arising from this Agreement, each party hereto shall be solely responsible for paying its attorney's fees and costs regardless of the outcome of any such procedure or litigation.

9.24 NOTICES. All notices, comments, consents, objections, approvals, waivers, and elections under this Agreement shall be in writing and shall be given only by hand delivery for which a receipt is obtained, or certified mail, prepaid with confirmation of delivery requested, or by electronic mail with delivery confirmation. All such communications shall be addressed to the applicable addressees set forth below or as any party may otherwise designate in the manner prescribed herein.

To Owner:	City of Bradenton Attn: _____ _____ Bradenton, Florida ____
With a copy to:	Blalock Walters, P.A Attn: Scott E. Rudacille, Esquire 802 11th Street West Bradenton, Florida 34205
To Construction Manager:	_____ Attn: _____ _____ _____

Notices, comments, consents, objections, approvals, waivers and elections shall be deemed given when received by the party for whom such communication is intended at such address herein specified, or such other physical address or email address as such party may have substituted by notice to the other.

9.25 PUBLIC RECORDS. To the extent applicable, the Construction Manager shall comply with the requirements of Florida's Public Records laws, specifically including the following:

A. Construction Manager shall keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the service;
B. Construction Manager shall provide the public with access to public records on the same terms and conditions that the Owner would provide and at a cost that does not

exceed the cost provided in Florida Statutes, Chapter 119, or as otherwise provided by law;

C. Construction Manager shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;

D. Construction Manager shall meet all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of Construction Manager upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential from public records disclosure requirements. All records stored electronically must be provided to Owner in a format that is compatible with Owner's information technology systems; and,

E. Construction Manager acknowledges that all information contained relating to the Agreement are public records, as defined in Chapter 119, "Public Records" of the Florida Statutes. No information should be labeled confidential unless exempted under said laws.

IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY OF BRADENTON CUSTODIAN OF PUBLIC RECORDS AT:
CITY CLERK
Phone: (941) 932-9400
Email: Cityclerk@Cityofbradenton.com
Mailing Address: 101 Old Main Street - Bradenton, FL 34205

9.26 CONFIDENTIAL SECURITY RECORDS.

A. Pursuant to Section 119.071 (3), Florida Statutes, the following records (hereinafter referred to collectively as the "Confidential Security Records") are confidential and exempt from the disclosure requirements of Section 119.071 (1), Florida Statutes:

1. A Security System Plan or portion thereof for any property owned by or leased to Owner or any privately owned or leased property held by Owner.

2. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by Owner.

3. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreational facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or

motel development in the possession of, submitted to Owner.

B. Construction Manager agrees that it shall not, as a result of a public records request or for any other reason disclose the contents of, or release or provide copies of the Confidential Security Records to any other party absent the express written authorization of the Owner or to comply with a court order requiring such release or disclosure. To the extent Construction Manager receives a request for such records, it shall immediately contact Owner who shall coordinate Owner's response to the request. Notwithstanding the foregoing, the Construction Manager shall:

1. Disclose or release Security System Plans to:

   a. The property owner or leaseholder; or

   b. Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual acts of terrorism, or to prosecute those persons who are responsible for such attempts or acts.

2. Disclose or release building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary and final formats, which depict the internal layout and structural elements of a building area, stadium, water treatment facility, or other structure owned or operated by Owner:

   a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

   b. To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by Owner and is contractually bound by the Construction Manager to comply with this Section; or

   c. Upon a showing of good cause before a court of competent jurisdiction.

C. For purposes of this Section, the term "Security System Plan" includes all:

1. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;

2. Threat assessments conducted by an agency or any private entity;

3. Threat response plans;

4. Emergency evacuation plans;

5. Sheltering arrangements; or

6. Manuals for security personnel, emergency equipment, or security training.

9.27 INDEMNIFICATION. The Construction Manager covenants and agrees to indemnify and save harmless the City of Bradenton, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of the Construction Manager, or any subcontractor (meaning anyone, including but not limited to consultants having a contract with the Construction Manager or a subcontractor for part of the services), or anyone directly or indirectly employed by the Construction Manager or by any subcontractor, or of anyone for whose acts the Construction Manager or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Construction Manager to indemnify, hold harmless, or defend the City of Bradenton from its own negligence. Nothing in the Agreement shall be deemed to affect the rights, privileges and immunities of the Owner to sovereign immunity under Florida law, or as set forth in Section 768.28, Florida Statutes.

ARTICLE 10
TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE.

A. RIGHT OF TERMINATION. Prior to execution by both parties of the GMP Addendum, the Owner may terminate this Agreement at any time without or without cause pursuant to Sections 14.1 and 14.2 of the General Conditions, and the Construction Manager may terminate this Agreement for any of the reasons described in Section 14.6 of the General Conditions.

B. COMPENSATION FOR PRECONSTRUCTION SERVICES. If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.A.

C. ADDITIONAL COMPENSATION FOR CONSIRUCTION SERVICES. If the Owner or Construction Manager terminates this Agreement pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section I0.1.B, be paid an amount calculated as follows:

1. Take the Cost of the Work incurred by the Construction Manager.

2. Add the Construction Manager's Fee computed upon the Cost of the Work to the

date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as to Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

3. Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.C.I. To the extent that the Owner elects to take legal assignment of Subcontracts and purchase orders (including rental agreements), the Construction Manager shall as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such Subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such Subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of the GMP Addendum shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the Subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any Subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this Agreement not been terminated, the Construction Manager shall terminate such Subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE. Subsequent to execution by both parties of the GMP Addendum, the Agreement may be terminated as provided in Article 14 of the General Conditions.

A. LIMITATION ON PAYMENT; TERMINATION BY OWNER. In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.2 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.B and 10.1.C of this Agreement.

B. LIMITATION ON PAYMENT; TERMINATION BY CONSTRUCTION MANAGER. In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.6 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.B and 10.1.C above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the

Cost of the Work for Work not actually completed.

10.3 SUSPENSION. The Work may be suspended by the Owner as provided in Section 14.3 of the General Conditions. In such case, the term "Contract Sum" in that Section shall be understood to mean Cost of the Work.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the parties hereunto have caused this agreement to be executed on the date first above written.

Signed, sealed and delivered in the presence of:

ATTEST:

_____
Tamara Melton, City Clerk

CITY OF BRADENTON, a municipal corporation

By: _____
Gene Brown, Mayor

ATTEST:

_____

John J. Cox, III
Printed Signature

_____

_____
By: _____
As its: _____

AGREEMENT FOR CONSTRUCTION MANAGEMENT AT RISK CONTINUING SERVICES FOR THE CITY OF BRADENTON

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Bradenton (the "Owner"), and NDC Construction Company, registered and licensed to do business in the State of Florida (License # CGC006547) (the "Construction Manager").

WHEREAS, Owner solicited statements of qualifications from interested construction managers for continuing construction manager "at-risk" services for the City of Bradenton for projects within the City (the "Project");

WHEREAS, Construction Manager represents that it has expertise in the type of construction management services that will be required for the Project;

WHEREAS, Owner desires Construction Manager to provide the professional construction management services requisite to the implementation of the Project, and

WHEREAS, any Project implemented under this Agreement shall be limited to repairs, renovations, modifications, alterations, and new construction projects not to exceed $4,000,000 in construction cost; and

NOW THEREFORE, the Owner and the Construction Manager, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1
GENERAL PROVISIONS

1.1 RELATIONSHIP OF PARTIES. The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect/Engineer, Construction Manager and other persons or entities employed by the Owner for the Project.

1.2 GENERAL CONDITIONS. The general conditions of the Agreement shall be the attached General Conditions of the Construction Agreement, which is incorporated herein by reference. The term "Contractor" as used in the General Conditions shall mean the Construction Manager. The term "Contract Sum" as used in the General Conditions shall mean Guaranteed Maximum Price (GMP).

ARTICLE 2
CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Services. If the Owner and Construction Manager agree, after consultation with the Architect/Engineer, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

2.1 PRECONSTRUCTION PHASE.

A. SCOPE OF SERVICES. Construction Management at Risk services to be provided during the Preconstruction Phase shall include, but not be limited to, services found in Exhibit A to the General Conditions.

B. PRELIMINARY EVALUATION. The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other. These services shall typically be based on conceptual designs up to 30-percent design drawings.

C. CONSULTATION. The Construction Manager, with the Architect/Engineer, shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect/Engineer regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

D. PRELIMINARY PROJECT SCHEDULE. When Project requirements described in Section 3.I.A have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect/Engineer's review and the Owner's approval. The Construction Manager shall obtain the Architect/Engineer's approval of the portion of the preliminary Project schedule relating to the performance of the Architect/Engineer's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect/Engineer and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price (GMP) proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer.

E. PHASED CONSTRUCTION. The Construction Manager shall make

recommendations to the Owner and Architect/Engineer regarding the phased issuance of Project Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

F. PRELIMINARY COST ESTIMATES.

1. When the Owner has sufficiently identified the Project requirements and the Architect/Engineer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2. When schematic design documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the design development documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

3. When design development documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect/Engineer and approval by the Owner. During the preparation of the construction documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

4. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer.

G. SUBCONTRACTORS AND SUPPLIERS. The Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to the Owner and Architect/Engineer for their information a list of possible Subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect/Engineer will promptly reply in writing to the Construction Manager if the Architect/Engineer or Owner know of any objection to such Subcontractor or supplier. The receipt of such list shall not require the Owner or Architect/Engineer to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it waive the right of the Owner or Architect/Engineer later to object to or reject any proposed. Subcontractors or suppliers.

H. LONG LEAD TIME ITEMS. The Construction Manager shall recommend to the Owner and Architect/Engineer a schedule for procurement of long-lead-time items which

will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's GMP proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

I. EXTENT OF RESPONSIBILITY. The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the GMP. The recommendation and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Project Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Project Plans and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect/Engineer and Owner in writing.

J. EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS. The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity programs.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME.

A. TIMING. When the Project Plans and Specifications are sufficiently complete, the Construction Manager shall propose a GMP, which shall be the sum of the estimated Cost of the Work and the Contractor's Fee.

B. FURTHER DEVELOPMENT OF PROJECT PLANS AND SPECIFICATIONS. As the Project Plans and Specifications may not be finished at the time the GMP proposal is prepared, the Construction Manager shall provide in the GMP for further development of the Project Plans and Specifications by the Architect/Engineer that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, as required, shall be incorporated by Change Order.

C. CONTINGENCY. The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.B and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

D. BASIS OF GUARANTEED MAXIMUM PRICE. The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

1. A list of the Project Plans and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the GMP proposal.

2. A list of allowances and a statement of their basis.

3. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP proposal to supplement the information contained in the Project Plans and Specifications.

4. The proposed GMP, including a statement of the estimated costs organized by trade categories, allowances, contingency, and other items and the Fee that comprise the GMP.

5. The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the construction documents issuance dates upon which the date of Substantial Completion is based.

E. MEETING OF CONSTRUCTION TEAM. The Construction Manager shall meet with the Owner and Architect/Engineer to review the GMP proposal and the written statement of its basis. In the event that the Owner or Architect/Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal, its basis, or both.

F. ACCEPTANCE. Unless the Owner accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the GMP proposal shall not be effective without written acceptance by the Construction Manager.

G. NO COSTS IN ADVANCE. Prior to the Owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

H. GMP ADDENDUM. Upon acceptance by the Owner of the GMP proposal, the GMP and its basis shall be set forth in the GMP Addendum. The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

I. REVISIONS TO PROJECT PLANS AND SPECIFICATONS. The Owner shall authorize and cause the Architect/Engineer to revise the Project Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Addendum. Such revised Project Plans and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect/Engineer and Construction Manager. The Construction Manager shall promptly notify the Architect/Engineer and Owner if such revised Project Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

J. TAXES. The GMP shall include in the Cost of the Work only those taxes which are enacted at the time the GMP is established.

2.3 CONSTRUCTION PHASE.

A. GENERAL.

1. The Construction Phase shall commence on the earlier of:

   i. the owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed,

   ii. or the Owner's first authorization to the Construction Manager to:

      (a) award a Subcontract,

      (b) undertake construction Work with the Construction Manager's own forces, or

      (c) issue a purchase order for materials or equipment required for the Work.

B. ADMINISTRATION.

1. Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under Subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect/Engineer. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect/Engineer, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the GMP has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2. If the GMP has been established, and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect/Engineer (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be

accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the GMP by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the Owner.

3. Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.H and 7.1.1 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

4. The Construction Manager shall schedule and conduct a meeting at which the Owner, Architect/Engineer, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

5. Promptly after the Owner's acceptance of the GMP proposal, the Construction Manager shall prepare a schedule in accordance with Section 2.3 of the General Conditions, including the Owner's occupancy requirements.

6. The Construction Manager shall provide monthly written reports to the Owner and Architect/Engineer on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the Project Site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect/Engineer.

7. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect/Engineer at regular intervals.

2.4 PROFESSIONAL SERVICES. Sections 2.1 and 2.2 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

2.5 HAZARDOUS MATERIALS. Sections 2.4.U and 5.5 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3
OWNER'S RESPONSIBILITES

3.1 **INFORMATION AND SERVICES.**

A. GENERAL INFORMATION. The Owner shall provide full information in

a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

B. BUDGET. The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect/Engineer, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

C. STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS. In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in subsections 1 through 5, below, but shall exercise customary precautions relating to the performance of the Work.

1. Reports, surveys, drawings and tests concerning the conditions of the Project Site which are required by law.

2. Surveys describing physical characteristics, legal limitations and utility locations for the Project Site, and a written legal description of the Project Site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Project Site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

3. The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolations tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

4. Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

5. The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE. The Owner shall designate in writing its Owner's Project Representative who shall have express authority to bind the Owner

with respect to all matters requiring the Owner's approval or authorization. This Representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 5.2 of the General Conditions, the Architect/Engineer does not have such authority.

3.3 ARCHITECT/ENGINEER. The Owner shall retain an Architect/Engineer to provide basic services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in Article VI of the General Conditions. The Owner shall authorize and cause the Architect/Engineer to provide those additional services requested by the Construction Manager which must necessarily be provided by the Architect/Engineer for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect/Engineer and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect/Engineer.

3.4 LEGAL REQUIREMENTS. The Owner shall determine and advise the Architect/Engineer and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4
COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Services as follows:

4.1 COMPENSATION.

A. PRECONSTRUCTION SERVICES. For the Preconstruction Services described in Section 2.1, the Construction Manager's compensation shall be a negotiated amount.

If the Preconstruction Services are Provided as Stand Alone Services:

4.2 PAYMENTS.

A. TIMING. Subject to the requirements of Article III of the General Conditions, payments for Preconstruction Services shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

B. DUE DATES. Payments shall be made by Owner in accordance with the requirements of Section 218.735, Florida Statutes.

ARTICLE 5
COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

5.1 COMPENSATION. For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determined as follows:

The Construction Management Fee Percentage shall be TBD percent (___%) of the total Cost of the Work.

5.2 GUARANTEED MAXIMUM PRICE. The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided as the GMP in the GMP Addendum, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the GMP. Costs which would cause the GMP to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

5.3 CHANGES IN THE WORK

A. ADJUSTMENTS TO GMP. Adjustments to the GMP on account of changes in the Work subsequent to the execution of the GMP Addendum may be determined by any of the methods listed in Article V of the General Conditions.

B. "COST". In calculating adjustments to Subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the Owner and Construction Manager shall proceed in accordance with Section 5.6 of the General Conditions. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts. In calculating adjustments to the Agreement, the terms "cost"' and "costs" as used in the above-referenced General Conditions shall mean the Cost of the Work as defined in Article 6 of this Agreement.

C. CONSTRUCTION MANAGER'S FEE. If no specific provision is made in Section 5.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such that, in the aggregate, the application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

ARTICLE 6
COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

A. COST OF WORK. The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

B. LABOR COSTS.

1. Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the Project Site or, with the Owner's agreement, at off-site workshops.

2. Wages or salaries of the Construction Managers supervisory and administrative personnel when stationed at the Project Site with the Owner's agreement.

Classification	Name

(If it is Intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be Included in the Cost of the Work; such personnel shall be identified below.)

3. Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

Classification	Labor Rate ($/Hour)

4. Costs paid or incurred by the Construction Manager for taxes. insurance,

contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.B.1 through 6.1.B.3.

C. SUBCONTRACT COSTS. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the Subcontracts.

D. COSTS MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION.

1. DIRECT PURCHASE ORDER (DPO) PROCESS

a. The Construction Manager at Risk (CMAR) identifies possible tax savings in agreement with the city's Public Works' representative.
b. The CMAR requests the city's Purchasing Department for a DPO (purchase order) based on a quote for materials on the project. The purchase order is to be issued for the materials and vendor outlined on the quote provided. The city's Public Works' representative is copied on the request.
c. The city's Purchasing Department issues a purchase order to the vendor on the quote for the full amount of the quote, or a "blanket" PO.
d. The city's Purchasing Department sends all invoices to the CMAR and the city's Public Works' representative for verification. The CMAR is responsible for receiving, logging and approving all invoices form the vendor for payment and emails the request for payment to Public Works.
e. The request for payment/invoice is reviewed the city's Public Works' representative.
f. Public Works authorizes the invoice for payment with accounting.
g. The invoice billing process repeats until the DPO runs out of money or is canceled.

A single DPO can be issued for a single purchase. However, if multiple purchases are made to the same vendor, it is more efficient to do a blanket DPO.

A Certificate of Entitlement is to be issued by Purchasing for each vendor utilizing a DPO

LANGUAGE TO INCLUDE WITH EVERY DPO:

SPECIAL INSTRUCTIONS: All responsibility & contact relative to the P.O. shall be with [name of the company], as to delivery, quality, and quantity.
Original invoices shall be sent to the above named contractor who will forward to the General Contractor. Payment will be delayed if this process is not followed.

2. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

3. Costs of materials described in the preceding Section 6.1.D.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner

at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

E. COSTS OF OTHER MATERIALS AND EOUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS.

1. Costs, including transportation, installation, maintenance, dismantling and removal of materials. supplies. temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the Project Site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

2. Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers which are provided by the Construction Manager at the Project Site. whether rented from the Construction Manager or others and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item.

3. Costs of removal of debris from the Project Site, including proper and legal disposal of same.

4. Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges. telephone at the Project Site and reasonable petty cash expenses of the Project Site office.

5. That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

F. MISCELLANEOUS COSTS.

1. That portion directly attributable to this Contract of premiums for insurance and bonds.

2. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

3. Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

4. Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.H.2, reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the Project Site and reasonable petty cash expenses of the Project Site office.

5. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses; judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the GMP and provided that such royalties, fees and costs are not excluded by the Contract Documents.

6. Costs for electronic equipment and software, directly related to the Work and with the Owner's prior approval.

7. Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

8. Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

9. Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

10. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

G. EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK. The Cost of the Work shall also include costs described in Section 6.1.A which are incurred by the Construction Manager:

1. In taking action to prevent threatened damage, injury or loss in case of emergency affecting the safety of persons and property, as provided in Section 2.4.P of the General Conditions.

2. In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement or by the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or by the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers or others.

H. COSTS TO BE INCLUDED. The costs described in Sections 6.1.A through 6.1.G shall be included in the Cost of the Work notwithstanding any provisions of the General Conditions which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

6.2 COSTS NOT TO BE REIMBURSED

The Cost of the Work shall not include:

1. Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project Site office, except as specifically provided in Sections 6.1.B.2 and 6.1.B.3.

2. Expenses of the Construction Manager's principal office and offices other than the Project Site office, except as specifically provided in Section 6.1.

3. Overhead and general expenses, except as may be expressly included in Section 6.1.

4. The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

5. Rental costs of machinery and equipment, except as specifically provided in Section 6.1.E.2.

6. Except as provided in Section 6.1.H.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

7. Costs incurred in the performance of Preconstruction Services.

8. Except as provided in Section 6.1.F.10, any cost not specifically and expressly

described in Section 6.1.

9. Costs which would cause the GMP to be exceeded.

10. Costs for services performed during the Preconstruction Phase.

6.3 DISCOUNTS, REBATES AND REFUNDS

A. ACCURAL TO OWNER. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

B. DEDUCTION FROM COST OF WORK. Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.A shall be credited to the Owner as a deduction from the Cost of the Work.

6.4 ACCOUNTING RECORDS. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, in order to substantiate all costs incurred under this Agreement. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants or other Owner-authorized personnel shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGESS PAYMENTS

A. PROGRESS PAYMENTS. Subject to the requirements of Article III of the General Conditions, based upon Applications for Payment submitted to the Architect/Engineer by the Construction Manager and Certificates for Payment issued by the Architect/Engineer, the Owner shall make progress payments on account of the GMP to the Construction Manager as provided below and elsewhere in the Contract Documents.

B. PERIOD COVERED. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

C. DATE OF PAYMENT. Payments shall be made by Owner in accordance with the requirements of Section 218.735, Florida Statutes.

D. SUPPORTING DOCUMENTATION. With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect/Engineer to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

E. SCHEDULE OF VALUES. Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, unless objected to by the Architect/Engineer, shall be used as a basis for reviewing the Construction Manager's Application for Payment.

F. PERCENTAGE OF COMPLETION. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the schedule of values.

G. COMPUTATION. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 5.6 of the General Conditions, even though the GMP has not yet been adjusted by Change Order.

2. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the Project Site at a location agreed upon in writing, supported by paid receipts.

3. Add the Construction Manager's Fee, less retainage of five percent (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1. or, if

the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Construction Manager's Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

4. Subtract the aggregate of previous payments made by the Owner.

5. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.D to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner in such documentation.

6. Subtract amounts, if any, for which the Architect/Engineer has withheld or nullified a Certificate for Payment as provided in Section 3.3.C of the General Conditions.

H. SUBCONTRATOR RETAINAGE. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontracts.

I. REDUCTION IN RETAINAGE. Notwithstanding the foregoing, upon completion of at least fifty percent (50%) of the Work, as determined by the Architect/Engineer and Owner, the Owner shall reduce to two and one-half percent (2.5%) the amount of retainage withheld from the Construction Manager's Fee in each subsequent progress payment.

J. NO ADVANCE PAYMENTS. Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the Project Site.

K. RELIANCE ON INFORMATION. In taking action on the Construction Manager's Applications for Payment, the Architect/Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect/Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.D or other supporting data, that the Architect/Engineer has made exhaustive or continuous on-site inspections or that the Architect/Engineer has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner acting in the sole interest of the Owner.

7.2 FINAL PAYMENT.

A. CONDITIONS OF FINAL PAYMENT. Final payment shall be made by the Owner to the Construction Manager when (1) the Agreement has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct

nonconforming Work, as provided in Section 2.4.C of the General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner; and (3) a final Certificate for Payment has then been issued by the Architect/Engineer; such final payment shall be made by the Owner not more than thirty (30) days after the issuance of the Architect/Engineer's final Certificate for Payment, or as follows:

B. CALCULATION. The amount of the final payment shall be calculated as follows:

1. Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the GMP.

2. Subtract amounts, if any, for which the Architect/Engineer withholds, in whole or in part, a final Certificate for Payment as provided in Section 3.3.C of the General Conditions or other provisions of the Contract Documents.

3. Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner. Failing reimbursement by the Construction Manager and notwithstanding any other provisions of the Contract Documents to the contrary, Owner shall have the right to bring a direct action in the Circuit Court to recover such overpayment.

C. REVIEW. The Owner's fiscal staff will review and report in writing on the Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to the Architect/Engineer by the Construction Manager. Based upon such Cost of the Work as the Owner's fiscal staff report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.A have been met, the Architect/Engineer will, within seven days after receipt of the written report of the Owner's fiscal staff, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect/Engineer's reasons for withholding a certificate as provided in Section 3.3.C of the General Conditions.

D. ISSUANCE. If the Owner's fiscal staff report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect/Engineer. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within sixty (60) days after the Construction Manager's receipt of a copy of the Architect/Engineer's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's fiscal staff becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect/Engineer's final

Certificate for Payment.

E. ADDITIONAL REIMBURSEMENTS. It; subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2, (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8
INSURANCE AND BONDS

8.1 INSURANCE. Before performing any services, the Construction Manager shall procure and maintain, during the life of the Agreement, unless otherwise specified, the insurance listed below. The insurance policies shall be primary and written on forms acceptable to the Owner and placed with the insurance carriers approved and licensed by the State of Florida Office of Insurance Regulation and meet a minimum financial AM Best Company rating of no less than "A-Excellent: FSC VII."

The Owner, its officers, agents, and employees, shall be named as additional insureds on all policies required (excluding worker's compensation). No changes may be made to these specifications without specific prior written approval of the Owner. The Owner shall retain the right to review, at any time, coverage, form, and amount of insurance.

A. **Workers' Compensation/Employers Liability:**

Part One - There shall be no maximum limit (other than as limited by the applicable statute) for liability imposed by Florida Workers' Compensation Act or any other coverage required by the Agreement which are customarily insured under Part One of the standard Workers' Compensation Policy.

Part Two - The minimum amount of coverage required by the Agreement which are customarily insured under Part Two of the standard Workers' Compensation Policy shall be:

(Each Accident)	$100,000
(Disease-Policy Limit)	$500,000
(Disease-Each Employee)	$100,000

B. **Commercial General Liability.**

The limits are to be applicable only to services performed under the Agreement and shall be those that would be provided with the attachment

of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement (ISO Form CG 2503) a Commercial General Liability Policy with the following minimum limits.

General Aggregate:	
Products/Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (Any One Fire)	$Nil
Medical Expense (Any One Person)	$Nil

ADDITIONAL INSURED: The City of Bradenton, a political subdivision of the State of Florida shall be specifically named as additional insured on the Commercial General Liability Policy.

C. **Business Auto Policy**

Each Occurrence Bodily Injury and	
Property Damage Liability Combined	$300,000
Annual Aggregate (if applicable)	$1,000,000

ADDITIONAL INSURED: The City of Bradenton, a political subdivision of the State of Florida, shall be specifically named as additional insured on the Business Auto Policy.

D. **Certificates of Insurance and Copies of Policies**

Certificates of Insurance in triplicate evidencing the insurance coverage specified herein shall be filed with the Purchasing Division before services begin. The required certificates of insurance shall name the types of policy, policy number, date of expiration, amount of coverage, companies affording coverage, and also shall refer specifically to the Agreement. All insurance policies required herein shall be issued by companies that are authorized to do business under the laws of the State of Florida and hold an A.M. Best rating of A- or better. Insurance, as specified herein, shall remain in force and effect for the duration of the Agreement, including any warranty periods.

E. **Complete Policies**:

The entire and complete insurance policies required herein shall be provided to the Owner on request. If the initial insurance expires prior to the completion of services by the Construction Manager, renewal certificates of insurance and required copies of policies shall be furnished by the Construction Manager and delivered to the Purchasing Official thirty (30) days prior to the date of their expiration. Nothing herein shall in any manner create any liability of the Owner in connection with any claim against the

Construction Manager for labor, services, or materials, or of subcontractors; and nothing herein shall limit the liability of the Construction Manager or Construction Manager's sureties to the Owner, or to any workers, suppliers, material men or employees in relation to this Agreement.

F. By way of its execution of the Agreement, the Construction Manager:

a. Represents that Construction Manager maintains, and will maintain during the term of the Agreement, insurance coverage from responsible companies duly authorized to do business in the State of Florida and deemed acceptable to Owner; and
b. Agrees that, insurance should not be cancelled without thirty (30) days' notice to the Owner and must be endorsed to provide same. Failure of Owner to obtain and maintain proper amounts of insurance at all times as called for herein shall constitute a material breach of the Agreement, which may result in immediate termination.

G. Certification Requirements – In order for the certificate of insurance to be accepted it must comply with the following:

a. The certificate holder shall be:
The City of Bradenton, A political subdivision of the
State of Florida
101 Old Main Street
Bradenton, FL 34205-7865
Reference: RFP# _____

b. Certificate shall be mailed to:
The City of Bradenton
Attn: _____
_____
Bradenton, FL _____

8.2 PAYMENT AND PERFORMANCE BOND.

A. BOND REQUIRED. For each project assigned, the Construction Manager shall post a Payment and Performance Bond in the amount of the GMP, in a form approved by the Owner.

B. DELIVERY. The Construction Manager shall deliver the required bond to the Owner at least three days before the commencement of any Construction Phase services.

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION. During both the Preconstruction and Construction Phases, claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Article VIII of the General Conditions.

9.2 OTHER PROVISIONS. Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the General Conditions.

9.3 EXTENT OF CONTRACT. This Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. Except as provided in Section 9.13 below, if anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.4 OWNERSHIP AND USE OF DOCUMENTS. Section 10.4 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

9.5 GOVERNING LAW; VENUE. This Agreement shall be governed by the laws of the State of Florida. Venue for any petition for writ of certiorari or other court action allowed by this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida.

9.6 ASSIGNMENT. The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

9.7 SUBSTANTIAL COMPLETION DEFINED. Substantial Completion shall be defined as provided in Article I of the General Conditions. In the event a temporary certificate of occupancy or completion is issued establishing Substantial Completion, the Construction Manager shall diligently pursue the issuance of a permanent certificate of occupancy or completion.

9.8 PROJECT MEETINGS. During the Construction Phase, there shall be project meetings, at the jobsite or other location acceptable to the parties, on a regularly scheduled basis. The meetings will be attended by a representative of the Construction Manager, Architect/Engineer and Owner. These representatives shall be authorized to make decisions that are not otherwise contrary to the requirements of this Agreement.

9.9 WEATHER. During the Construction Phase, any rainfall temperatures below 32

degrees Fahrenheit or winds greater than 25 m.p.h. which actually prevents Work on a given day, shall be considered lost time and an additional day added to the Contract Time, provided no work could be done on site, and provided written notice has been contemporaneously submitted to the Owner by the Construction Manager documenting same.

9.10 SHOP DRAWINGS; CRITICAL SUBMITTALS. In consideration of the impact of timely review of submittals and shop drawings on the overall progress of the Work, it is hereby agreed that the Owner shall cause its agents and design professionals to accomplish the review of any particular "critical" submittals and/or shop drawings and return same to the Construction Manager within fourteen (14) days.

9.11 PUNCH LIST. Within 30 days after obtainment of Substantial Completion, the Owner shall generate a "punch list" of all work items requiring remedial attention by the Construction Manager. Within 5 days thereafter the Architect/Engineer shall assign a fair value to the punch list items, which sum shall be deducted from the next scheduled progress payment to the Construction Manager. Upon satisfactory completion of the punch list items, as certified by the Architect/Engineer, the previously deducted sum shall be paid to the Construction Manager.

9.12 CLOSEOUT DOCUMENTATION. Within 30 days after obtainment of Substantial Completion and before final payment, Construction Manager shall gather and deliver to Owner all warranty documentation, all manufacturer's product and warranty literature, all manuals (including parts and technical manuals), all schematics and handbooks, and all as-built drawings.

9.13 GOVERNING PROVISIONS; CONFLICTS. In the event of a conflict between this Agreement and the Specifications or as between the General Conditions and the Specifications, the Specifications shall govern.

9.14 E-VERIFY. Section 448.09, Florida Statutes, makes it unlawful for any person to knowingly employ, hire, recruit, or refer, for private or public employment, an alien who is not duly authorized to work in the United States. Section 448.095, Florida Statutes, prohibits public employers, contractors, and subcontractors from entering into a contract unless each party to the contract registers and uses E-Verify. Construction Manager hereby represents that it is in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes. Construction Manager further represents that it will remain in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes, during the term of the Agreement. Construction Manager hereby warrants that it has not been terminated by a public employer for violating Section 448.095, Florida Statutes, within the year preceding the effective date of this Agreement. If Construction Manager has a contract terminated by a public employer for any such violation during the term of this contract, it shall provide immediate notice thereof to the Owner.

Construction Manager shall be required to complete an E-Verify Affidavit attesting to compliance with Section 448.09, Florida Statutes.

9.15 INDEPENDENT CONTRACTOR. The Construction Manager acknowledges that it is functioning as an independent contractor in performing under the terms of this Agreement, and it is not acting as an employee of the Owner.

9.16 WAIVERS. Neither this Agreement nor any portion of it may be modified or waived orally. However, each party (through its governing body or properly authorized officer) shall have the right, but not the obligation, to waive, on a case-by-case basis, any right or condition herein reserved or intended for the benefit or protection of such party without being deemed or considered to have waived such right or condition for any other case, situation, or circumstance and without being deemed or considered to have waived any other right or condition. No such waiver shall be effective unless made in writing with an express and specific statement of the intent of such governing body or officer to provide such waiver.

9.17 VALIDITY. Each of the Owner and Construction Manager represents and warrants to the other its respective authority to enter into this Agreement.

9.18 COVENANT TO DEFEND. Neither the validity of this Agreement nor the validity of any portion hereof may be challenged by any party hereto, and each party hereto hereby waives any right to initiate any such challenge. Furthermore, if this Agreement or any portion hereof is challenged by a third party in any judicial, administrative, or appellate proceeding (each party hereby covenanting with the other party not to initiate, encourage, foster, promote, cooperate with, or acquiesce to such challenge), the parties hereto collectively and individually agree, at their individual sole cost and expense, to defend in good faith its validity through a final judicial determination or other resolution, unless all parties mutually agree in writing not to defend such challenge or not to appeal any decision invalidating this Agreement or any portion thereof:

9.19 DISCLAIMER OF THIRD PARTY BENEFICIARIES; SUCCESSORS AND ASSIGNS. This Agreement is solely for the benefit of the parties hereto, and no right, privilege, or cause of action shall by reason hereof accrue upon, to, or for the benefit of any third party. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, corporation, partnership, trust, private entity, agency, or other governmental entity any right, privilege, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof. This Agreement shall be binding upon, and its benefits and advantages shall inure to, the successors and assigns of the parties hereto.

9.20 HEADINGS AND CAPTIONS. The headings and captions of articles, sections, and paragraphs used this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or be taken into consideration in interpreting this Agreement.

9.21 LEGAL REFERENCES. All references to statutory sections or chapters shall be construed to include subsequent amendments to such provisions, and to refer to the successor provision of any such provision. References to "applicable law" and "general law" shall be construed to include provisions of local, state and federal law, whether established by legislative action, administrative rule or regulation, or judicial decision.

9.22 SEVERABILITY. The provisions of this Agreement are declared by the parties hereto to be severable. In the event any term or provision of this Agreement shall be held invalid by a court of competent jurisdiction, such invalid term or provision should not affect the validity

of any other term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent thereat then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

9.23 ATTORNEY'S FEES AND COSTS. In any claim dispute procedure or litigation arising from this Agreement, each party hereto shall be solely responsible for paying its attorney's fees and costs regardless of the outcome of any such procedure or litigation.

9.24 NOTICES. All notices, comments, consents, objections, approvals, waivers, and elections under this Agreement shall be in writing and shall be given only by hand delivery for which a receipt is obtained, or certified mail, prepaid with confirmation of delivery requested, or by electronic mail with delivery confirmation. All such communications shall be addressed to the applicable addressees set forth below or as any party may otherwise designate in the manner prescribed herein.

To Owner: City of Bradenton
Attn: _____

_____

Bradenton, Florida _____

With a copy to: Blalock Walters, P.A
Attn: Scott E. Rudacille, Esquire
802 11th Street West
Bradenton, Florida 34205

To Construction Manager: NDC Construction Company
Attn: Ronald Allen
1001 3rd Ave West Suite 600
Bradenton Fl 34205

Notices, comments, consents, objections, approvals, waivers and elections shall be deemed given when received by the party for whom such communication is intended at such address herein specified, or such other physical address or email address as such party may have substituted by notice to the other.

9.25 PUBLIC RECORDS. To the extent applicable, the Construction Manager shall comply with the requirements of Florida's Public Records laws, specifically including the following:

A. Construction Manager shall keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the service;
B. Construction Manager shall provide the public with access to public records on the same terms and conditions that the Owner would provide and at a cost that does not

exceed the cost provided in Florida Statutes, Chapter 119, or as otherwise provided by law;

C. Construction Manager shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;

D. Construction Manager shall meet all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of Construction Manager upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential from public records disclosure requirements. All records stored electronically must be provided to Owner in a format that is compatible with Owner's information technology systems; and,

E. Construction Manager acknowledges that all information contained relating to the Agreement are public records, as defined in Chapter 119, "Public Records" of the Florida Statutes. No information should be labeled confidential unless exempted under said laws.

IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY OF BRADENTON CUSTODIAN OF PUBLIC RECORDS AT:
CITY CLERK
Phone: (941) 932-9400
Email: Cityclerk@Cityofbradenton.com
Mailing Address: 101 Old Main Street – Bradenton, FL 34205

9.26 CONFIDENTIAL SECURITY RECORDS.

A. Pursuant to Section 119.071(3), Florida Statutes, the following records (hereinafter referred to collectively as the "Confidential Security Records") are confidential and exempt from the disclosure requirements of Section 119.071(1), Florida Statutes:

1. A Security System Plan or portion thereof for any property owned by or leased to Owner or any privately owned or leased property held by Owner.

2. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by Owner.

3. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreational facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or

motel development in the possession of, submitted to Owner.

B. Construction Manager agrees that it shall not, as a result of a public records request or for any other reason disclose the contents of, or release or provide copies of the Confidential Security Records to any other party absent the express written authorization of the Owner or to comply with a court order requiring such release or disclosure. To the extent Construction Manager receives a request for such records, it shall immediately contact Owner who shall coordinate Owner's response to the request. Notwithstanding the foregoing, the Construction Manager shall:

1. Disclose or release Security System Plans to:

   a. The property owner or leaseholder; or

   b. Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual acts of terrorism, or to prosecute those persons who are responsible for such attempts or acts.

2. Disclose or release building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary and final formats, which depict the internal layout and structural elements of a building area, stadium, water treatment facility, or other structure owned or operated by Owner:

   a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

   b. To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by Owner and is contractually bound by the Construction Manager to comply with this Section; or

   c. Upon a showing of good cause before a court of competent jurisdiction.

C. For purposes of this Section, the term "Security System Plan" includes all:

1. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;

2. Threat assessments conducted by an agency or any private entity;

3. Threat response plans;

4. Emergency evacuation plans;

5. Sheltering arrangements; or

6. Manuals for security personnel, emergency equipment, or security training.

9.27 INDEMNIFICATION. The Construction Manager covenants and agrees to indemnify and save harmless the City of Bradenton, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of the Construction Manager, or any subcontractor (meaning anyone, including but not limited to consultants having a contract with the Construction Manager or a subcontractor for part of the services), or anyone directly or indirectly employed by the Construction Manager or by any subcontractor, or of anyone for whose acts the Construction Manager or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Construction Manager to indemnify, hold harmless, or defend the City of Bradenton from its own negligence. Nothing in the Agreement shall be deemed to affect the rights, privileges and immunities of the Owner to sovereign immunity under Florida law, or as set forth in Section 768.28, Florida Statutes.

ARTICLE 10
TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE.

A. RIGHT OF TERMINATION. Prior to execution by both parties of the GMP Addendum, the Owner may terminate this Agreement at any time without or without cause pursuant to Sections 14.1 and 14.2 of the General Conditions, and the Construction Manager may terminate this Agreement for any of the reasons described in Section 14.6 of the General Conditions.

B. COMPENSATION FOR PRECONSTRUCTION SERVICES. If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.A.

C. ADDITIONAL COMPENSATION FOR CONS1RUCTION SERVICES. If the Owner or Construction Manager terminates this Agreement pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.B, be paid an amount calculated as follows:

1. Take the Cost of the Work incurred by the Construction Manager.

2. Add the Construction Manager's Fee computed upon the Cost of the Work to the

date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as to Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

3. Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.C.l. To the extent that the Owner elects to take legal assignment of Subcontracts and purchase orders (including rental agreements), the Construction Manager shall as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such Subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such Subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of the GMP Addendum shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the Subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any Subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this Agreement not been terminated, the Construction Manager shall terminate such Subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE. Subsequent to execution by both parties of the GMP Addendum, the Agreement may be terminated as provided in Article 14 of the General Conditions.

A. LIMITATION ON PAYMENT; TERMINATION BY OWNER. In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.2 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.B and 10.1.C of this Agreement.

B. LIMITATION ON PAYMENT; TERMINATION BY CONSTRUCTION MANAGER. In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.6 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.B and 10.1.C above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the

Cost of the Work for Work not actually completed.

10.3 SUSPENSION. The Work may be suspended by the Owner as provided in Section 14.3 of the General Conditions. In such case, the term "Contract Sum" in that Section shall be understood to mean Cost of the Work.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the parties hereunto have caused this agreement to be executed on the date first above written.

Signed, sealed and delivered in the presence of:

ATTEST:

Tamara Melton, City Clerk

CITY OF BRADENTON, a municipal corporation

By: _____
Gene Brown, Mayor

ATTEST:

Gail Palazzola
Printed Signature

By: Ronald J Allen
As its: President

AGREEMENT FOR CONSTRUCTION MANAGEMENT AT RISK CONTINUING SERVICES FOR THE CITY OF BRADENTON

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Bradenton (the "Owner"), and P.J.Hayes, Inc dba Tandem Construction, registered and licensed to do business in the State of Florida (License # CGCA31741) (the "Construction Manager").

WHEREAS, Owner solicited statements of qualifications from interested construction managers for continuing construction manager "at-risk" services for the City of Bradenton for projects within the City (the "Project");

WHEREAS, Construction Manager represents that it has expertise in the type of construction management services that will be required for the Project;

WHEREAS, Owner desires Construction Manager to provide the professional construction management services requisite to the implementation of the Project, and

WHEREAS, any Project implemented under this Agreement shall be limited to repairs, renovations, modifications, alterations, and new construction projects not to exceed $4,000,000 in construction cost; and

NOW THEREFORE, the Owner and the Construction Manager, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1
GENERAL PROVISIONS

1.1 RELATIONSHIP OF PARTIES. The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect/Engineer, Construction Manager and other persons or entities employed by the Owner for the Project.

1.2 GENERAL CONDITIONS. The general conditions of the Agreement shall be the attached General Conditions of the Construction Agreement, which is incorporated herein by reference. The term "Contractor" as used in the General Conditions shall mean the Construction Manager. The term "Contract Sum" as used in the General Conditions shall mean Guaranteed Maximum Price (GMP).

ARTICLE 2
CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Services. If the Owner and Construction Manager agree, after consultation with the Architect/Engineer, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

2.1 PRECONSTRUCTION PHASE.

A. SCOPE OF SERVICES. Construction Management at Risk services to be provided during the Preconstruction Phase shall include, but not be limited to, services found in Exhibit A to the General Conditions.

B. PRELIMINARY EVALUATION. The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other. These services shall typically be based on conceptual designs up to 30-percent design drawings.

C. CONSULTATION. The Construction Manager, with the Architect/Engineer, shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect/Engineer regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

D. PRELIMINARY PROJECT SCHEDULE. When Project requirements described in Section 3.I.A have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect/Engineer's review and the Owner's approval. The Construction Manager shall obtain the Architect/Engineer's approval of the portion of the preliminary Project schedule relating to the performance of the Architect/Engineer's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect/Engineer and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price (GMP) proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer.

E. PHASED CONSTRUCTION. The Construction Manager shall make

recommendations to the Owner and Architect/Engineer regarding the phased issuance of Project Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

F. PRELIMINARY COST ESTIMATES.

1. When the Owner has sufficiently identified the Project requirements and the Architect/Engineer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2. When schematic design documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the design development documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

3. When design development documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect/Engineer and approval by the Owner. During the preparation of the construction documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

4. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer.

G. SUBCONTRACTORS AND SUPPLIERS. The Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to the Owner and Architect/Engineer for their information a list of possible Subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect/Engineer will promptly reply in writing to the Construction Manager if the Architect/Engineer or Owner know of any objection to such Subcontractor or supplier. The receipt of such list shall not require the Owner or Architect/Engineer to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it waive the right of the Owner or Architect/Engineer later to object to or reject any proposed. Subcontractors or suppliers.

H. LONG LEAD TIME ITEMS. The Construction Manager shall recommend to the Owner and Architect/Engineer a schedule for procurement of long-lead-time items which

will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's GMP proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

I. EXTENT OF RESPONSIBILITY. The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the GMP. The recommendation and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Project Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Project Plans and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect/Engineer and Owner in writing.

J. EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS. The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity programs.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME.

A. TIMING. When the Project Plans and Specifications are sufficiently complete, the Construction Manager shall propose a GMP, which shall be the sum of the estimated Cost of the Work and the Contractor's Fee.

B. FURTHER DEVELOPMENT OF PROJECT PLANS AND SPECIFICATIONS. As the Project Plans and Specifications may not be finished at the time the GMP proposal is prepared, the Construction Manager shall provide in the GMP for further development of the Project Plans and Specifications by the Architect/Engineer that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, as required, shall be incorporated by Change Order.

C. CONTINGENCY. The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.B and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

D. BASIS OF GUARANTEED MAXIMUM PRICE. The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

1. A list of the Project Plans and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the GMP proposal.

2. A list of allowances and a statement of their basis.

3. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP proposal to supplement the information contained in the Project Plans and Specifications.

4. The proposed GMP, including a statement of the estimated costs organized by trade categories, allowances, contingency, and other items and the Fee that comprise the GMP.

5. The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the construction documents issuance dates upon which the date of Substantial Completion is based.

E. MEETING OF CONSTRUCTION TEAM. The Construction Manager shall meet with the Owner and Architect/Engineer to review the GMP proposal and the written statement of its basis. In the event that the Owner or Architect/Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal, its basis, or both.

F. ACCEPTANCE. Unless the Owner accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the GMP proposal shall not be effective without written acceptance by the Construction Manager.

G. NO COSTS IN ADVANCE. Prior to the Owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

H. GMP ADDENDUM. Upon acceptance by the Owner of the GMP proposal, the GMP and its basis shall be set forth in the GMP Addendum. The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

I. REVISIONS TO PROJECT PLANS AND SPECIFICATONS. The Owner shall authorize and cause the Architect/Engineer to revise the Project Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Addendum. Such revised Project Plans and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect/Engineer and Construction Manager. The Construction Manager shall promptly notify the Architect/Engineer and Owner if such revised Project Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

J. TAXES. The GMP shall include in the Cost of the Work only those taxes which are enacted at the time the GMP is established.

2.3 CONSTRUCTION PHASE.

A. GENERAL.

1. The Construction Phase shall commence on the earlier of:

   i. the owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed,

   ii. or the Owner's first authorization to the Construction Manager to:

      (a) award a Subcontract,

      (b) undertake construction Work with the Construction Manager's own forces, or

      (c) issue a purchase order for materials or equipment required for the Work.

B. ADMINISTRATION.

1. Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under Subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect/Engineer. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect/Engineer, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the GMP has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2. If the GMP has been established, and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect/Engineer (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be

accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the GMP by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the Owner.

3. Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.H and 7.1.1 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

4. The Construction Manager shall schedule and conduct a meeting at which the Owner, Architect/Engineer, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

5. Promptly after the Owner's acceptance of the GMP proposal, the Construction Manager shall prepare a schedule in accordance with Section 2.3 of the General Conditions, including the Owner's occupancy requirements.

6. The Construction Manager shall provide monthly written reports to the Owner and Architect/Engineer on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the Project Site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect/Engineer.

7. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect/Engineer at regular intervals.

2.4 PROFESSIONAL SERVICES. Sections 2.1 and 2.2 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

2.5 HAZARDOUS MATERIALS. Sections 2.4.U and 5.5 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3
OWNER'S RESPONSIBILITES

3.1 **INFORMATION AND SERVICES**.

A. GENERAL INFORMATION. The Owner shall provide full information in

a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

B. BUDGET. The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect/Engineer, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

C. STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS. In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in subsections 1 through 5, below, but shall exercise customary precautions relating to the performance of the Work.

1. Reports, surveys, drawings and tests concerning the conditions of the Project Site which are required by law.

2. Surveys describing physical characteristics, legal limitations and utility locations for the Project Site, and a written legal description of the Project Site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Project Site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

3. The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolations tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

4. Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

5. The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE. The Owner shall designate in writing its Owner's Project Representative who shall have express authority to bind the Owner

with respect to all matters requiring the Owner's approval or authorization. This Representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 5.2 of the General Conditions, the Architect/Engineer does not have such authority.

3.3 ARCHITECT/ENGINEER. The Owner shall retain an Architect/Engineer to provide basic services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in Article VI of the General Conditions. The Owner shall authorize and cause the Architect/Engineer to provide those additional services requested by the Construction Manager which must necessarily be provided by the Architect/Engineer for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect/Engineer and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect/Engineer.

3.4 LEGAL REQUIREMENTS. The Owner shall determine and advise the Architect/Engineer and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4
COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Services as follows:

4.1 COMPENSATION.

A. PRECONSTRUCTION SERVICES. For the Preconstruction Services described in Section 2.1, the Construction Manager's compensation shall be a negotiated amount.

If the Preconstruction Services are Provided as Stand Alone Services:

4.2 PAYMENTS.

A. TIMING. Subject to the requirements of Article III of the General Conditions, payments for Preconstruction Services shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

B. DUE DATES. Payments shall be made by Owner in accordance with the requirements of Section 218.735, Florida Statutes.

ARTICLE 5
COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

5.1 COMPENSATION. For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determined as follows:

The Construction Management Fee Percentage shall be TBD percent (TBD%) of the total Cost of the Work.

5.2 GUARANTEED MAXIMUM PRICE. The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided as the GMP in the GMP Addendum, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the GMP. Costs which would cause the GMP to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

5.3 CHANGES IN THE WORK

A. ADJUSTMENTS TO GMP. Adjustments to the GMP on account of changes in the Work subsequent to the execution of the GMP Addendum may be determined by any of the methods listed in Article V of the General Conditions.

B. "COST". In calculating adjustments to Subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the Owner and Construction Manager shall proceed in accordance with Section 5.6 of the General Conditions. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts. In calculating adjustments to the Agreement, the terms "cost'" and "costs" as used in the above-referenced General Conditions shall mean the Cost of the Work as defined in Article 6 of this Agreement.

C. CONSTRUCTION MANAGER'S FEE. If no specific provision is made in Section 5.l for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such that, in the aggregate, the application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

ARTICLE 6
COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

A. COST OF WORK. The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

B. LABOR COSTS.

1. Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the Project Site or, with the Owner's agreement, at off-site workshops.

2. Wages or salaries of the Construction Managers supervisory and administrative personnel when stationed at the Project Site with the Owner's agreement.

Classification	Name
TBD	TBD

(If it is Intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be Included in the Cost of the Work; such personnel shall be identified below.)

3. Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

Classification	Labor Rate ($/Hour)
TBD	TBD

4. Costs paid or incurred by the Construction Manager for taxes. insurance,

contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.B.l through 6.1.B.3.

C. SUBCONTRACT COSTS. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the Subcontracts.

D. COSTS MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION.

1. DIRECT PURCHASE ORDER (DPO) PROCESS

a. The Construction Manager at Risk (CMAR) identifies possible tax savings in agreement with the city's Public Works' representative.
b. The CMAR requests the city's Purchasing Department for a DPO (purchase order) based on a quote for materials on the project. The purchase order is to be issued for the materials and vendor outlined on the quote provided. The city's Public Works' representative is copied on the request.
c. The city's Purchasing Department issues a purchase order to the vendor on the quote for the full amount of the quote, or a "blanket" PO.
d. The city's Purchasing Department sends all invoices to the CMAR and the city's Public Works' representative for verification. The CMAR is responsible for receiving, logging and approving all invoices form the vendor for payment and emails the request for payment to Public Works.
e. The request for payment/invoice is reviewed the city's Public Works' representative.
f. Public Works authorizes the invoice for payment with accounting.
g. The invoice billing process repeats until the DPO runs out of money or is canceled.

A single DPO can be issued for a single purchase. However, if multiple purchases are made to the same vendor, it is more efficient to do a blanket DPO.

A Certificate of Entitlement is to be issued by Purchasing for each vendor utilizing a DPO

LANGUAGE TO INCLUDE WITH EVERY DPO:

SPECIAL INSTRUCTIONS: All responsibility & contact relative to the P.O. shall be with [name of the company], as to delivery, quality, and quantity.
Original invoices shall be sent to the above named contractor who will forward to the General Contractor. Payment will be delayed if this process is not followed.

2. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

3. Costs of materials described in the preceding Section 6.1.D.l in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner

at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

E. COSTS OF OTHER MATERIALS AND EOUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS.

1. Costs, including transportation, installation, maintenance, dismantling and removal of materials. supplies. temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the Project Site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

2. Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers which are provided by the Construction Manager at the Project Site. whether rented from the Construction Manager or others and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item.

3. Costs of removal of debris from the Project Site, including proper and legal disposal of same.

4. Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges. telephone at the Project Site and reasonable petty cash expenses of the Project Site office.

5. That portion of the reasonable travel and subsistence expenses of the Construction Manager’s personnel incurred while traveling in discharge of duties connected with the Work.

F. MISCELLANEOUS COSTS.

1. That portion directly attributable to this Contract of premiums for insurance and bonds.

2. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

3. Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

4. Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.H.2, reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the Project Site and reasonable petty cash expenses of the Project Site office.

5. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses; judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the GMP and provided that such royalties, fees and costs are not excluded by the Contract Documents.

6. Costs for electronic equipment and software, directly related to the Work and with the Owner's prior approval.

7. Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

8. Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

9. Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

10. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

G. EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK. The Cost of the Work shall also include costs described in Section 6.1.A which are incurred by the Construction Manager:

1. In taking action to prevent threatened damage, injury or loss in case of emergency affecting the safety of persons and property, as provided in Section 2.4.P of the General Conditions.

2. In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement or by the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or by the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers or others.

H. COSTS TO BE INCLUDED. The costs described in Sections 6.1.A through 6.1.G shall be included in the Cost of the Work notwithstanding any provisions of the General Conditions which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

6.2 COSTS NOT TO BE REIMBURSED

The Cost of the Work shall not include:

1. Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project Site office, except as specifically provided in Sections 6.1.B.2 and 6.1.B.3.

2. Expenses of the Construction Manager's principal office and offices other than the Project Site office, except as specifically provided in Section 6.1.

3. Overhead and general expenses, except as may be expressly included in Section 6.1.

4. The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

5. Rental costs of machinery and equipment, except as specifically provided in Section 6.1.E.2.

6. Except as provided in Section 6.1.H.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

7. Costs incurred in the performance of Preconstruction Services.

8. Except as provided in Section 6.1.F.10, any cost not specifically and expressly

described in Section 6.1.

9. Costs which would cause the GMP to be exceeded.

10. Costs for services performed during the Preconstruction Phase.

6.3 DISCOUNTS, REBATES AND REFUNDS

A. ACCURAL TO OWNER. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

B. DEDUCTION FROM COST OF WORK. Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.A shall be credited to the Owner as a deduction from the Cost of the Work.

6.4 ACCOUNTING RECORDS. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, in order to substantiate all costs incurred under this Agreement. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants or other Owner-authorized personnel shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGESS PAYMENTS

A. PROGRESS PAYMENTS. Subject to the requirements of Article III of the General Conditions, based upon Applications for Payment submitted to the Architect/Engineer by the Construction Manager and Certificates for Payment issued by the Architect/Engineer, the Owner shall make progress payments on account of the GMP to the Construction Manager as provided below and elsewhere in the Contract Documents.

B. PERIOD COVERED. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

C. DATE OF PAYMENT. Payments shall be made by Owner in accordance with the requirements of Section 218.735, Florida Statutes.

D. SUPPORTING DOCUMENTATION. With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect/Engineer to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

E. SCHEDULE OF VALUES. Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, unless objected to by the Architect/Engineer, shall be used as a basis for reviewing the Construction Manager's Application for Payment.

F. PERCENTAGE OF COMPLETION. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the schedule of values.

G. COMPUTATION. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 5.6 of the General Conditions, even though the GMP has not yet been adjusted by Change Order.

2. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the Project Site at a location agreed upon in writing, supported by paid receipts.

3. Add the Construction Manager's Fee, less retainage of five percent (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1. or, if

the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Construction Manager's Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

4. Subtract the aggregate of previous payments made by the Owner.

5. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.l.D to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner in such documentation.

6. Subtract amounts, if any, for which the Architect/Engineer has withheld or nullified a Certificate for Payment as provided in Section 3.3.C of the General Conditions.

H. SUBCONTRATOR RETAINAGE. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontracts.

I. REDUCTION IN RETAINAGE. Notwithstanding the foregoing, upon completion of at least fifty percent (50%) of the Work, as determined by the Architect/Engineer and Owner, the Owner shall reduce to two and one-half percent (2.5%) the amount of retainage withheld from the Construction Manager's Fee in each subsequent progress payment.

J. NO ADVANCE PAYMENTS. Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the Project Site.

K. RELIANCE ON INFORMATION. In taking action on the Construction Manager's Applications for Payment, the Architect/Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect/Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.D or other supporting data, that the Architect/Engineer has made exhaustive or continuous on-site inspections or that the Architect/Engineer has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner acting in the sole interest of the Owner.

7.2 FINAL PAYMENT.

A. CONDITIONS OF FINAL PAYMENT. Final payment shall be made by the Owner to the Construction Manager when (1) the Agreement has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct

nonconforming Work, as provided in Section 2.4.C of the General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner; and (3) a final Certificate for Payment has then been issued by the Architect/Engineer; such final payment shall be made by the Owner not more than thirty (30) days after the issuance of the Architect/Engineer's final Certificate for Payment, or as follows:

B. CALCULATION. The amount of the final payment shall be calculated as follows:

1. Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the GMP.

2. Subtract amounts, if any, for which the Architect/Engineer withholds, in whole or in part, a final Certificate for Payment as provided in Section 3.3.C of the General Conditions or other provisions of the Contract Documents.

3. Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner. Failing reimbursement by the Construction Manager and notwithstanding any other provisions of the Contract Documents to the contrary, Owner shall have the right to bring a direct action in the Circuit Court to recover such overpayment.

C. REVIEW. The Owner's fiscal staff will review and report in writing on the Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to the Architect/Engineer by the Construction Manager. Based upon such Cost of the Work as the Owner's fiscal staff report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.A have been met, the Architect/Engineer will, within seven days after receipt of the written report of the Owner's fiscal staff, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect/Engineer's reasons for withholding a certificate as provided in Section 3.3.C of the General Conditions.

D. ISSUANCE. If the Owner's fiscal staff report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect/Engineer. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within sixty (60) days after the Construction Manager's receipt of a copy of the Architect/Engineer's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's fiscal staff becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect/Engineer's final

Certificate for Payment.

E. ADDITIONAL REIMBURSEMENTS. It; subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2, (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8
INSURANCE AND BONDS

8.1 INSURANCE. Before performing any services, the Construction Manager shall procure and maintain, during the life of the Agreement, unless otherwise specified, the insurance listed below. The insurance policies shall be primary and written on forms acceptable to the Owner and placed with the insurance carriers approved and licensed by the State of Florida Office of Insurance Regulation and meet a minimum financial AM Best Company rating of no less than "A-Excellent: FSC VII."

The Owner, its officers, agents, and employees, shall be named as additional insureds on all policies required (excluding worker's compensation). No changes may be made to these specifications without specific prior written approval of the Owner. The Owner shall retain the right to review, at any time, coverage, form, and amount of insurance.

A. **Workers' Compensation/Employers Liability:**

Part One - There shall be no maximum limit (other than as limited by the applicable statute) for liability imposed by Florida Workers' Compensation Act or any other coverage required by the Agreement which are customarily insured under Part One of the standard Workers' Compensation Policy.

Part Two - The minimum amount of coverage required by the Agreement which are customarily insured under Part Two of the standard Workers' Compensation Policy shall be:

(Each Accident)	$100,000
(Disease-Policy Limit)	$500,000
(Disease-Each Employee)	$100,000

B. **Commercial General Liability**.

The limits are to be applicable only to services performed under the Agreement and shall be those that would be provided with the attachment

of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement (ISO Form CG 2503) a Commercial General Liability Policy with the following minimum limits.

General Aggregate:	
Products/Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (Any One Fire)	$Nil
Medical Expense (Any One Person)	$Nil

ADDITIONAL INSURED: The City of Bradenton, a political subdivision of the State of Florida shall be specifically named as additional insured on the Commercial General Liability Policy.

C. **Business Auto Policy**

Each Occurrence Bodily Injury and	
Property Damage Liability Combined	$300,000
Annual Aggregate (if applicable)	$1,000,000

ADDITIONAL INSURED: The City of Bradenton, a political subdivision of the State of Florida, shall be specifically named as additional insured on the Business Auto Policy.

D. **Certificates of Insurance and Copies of Policies**

Certificates of Insurance in triplicate evidencing the insurance coverage specified herein shall be filed with the Purchasing Division before services begin. The required certificates of insurance shall name the types of policy, policy number, date of expiration, amount of coverage, companies affording coverage, and also shall refer specifically to the Agreement. All insurance policies required herein shall be issued by companies that are authorized to do business under the laws of the State of Florida and hold an A.M. Best rating of A- or better. Insurance, as specified herein, shall remain in force and effect for the duration of the Agreement, including any warranty periods.

E. **Complete Policies**:

The entire and complete insurance policies required herein shall be provided to the Owner on request. If the initial insurance expires prior to the completion of services by the Construction Manager, renewal certificates of insurance and required copies of policies shall be furnished by the Construction Manager and delivered to the Purchasing Official thirty (30) days prior to the date of their expiration. Nothing herein shall in any manner create any liability of the Owner in connection with any claim against the

Construction Manager for labor, services, or materials, or of subcontractors; and nothing herein shall limit the liability of the Construction Manager or Construction Manager's sureties to the Owner, or to any workers, suppliers, material men or employees in relation to this Agreement.

F. By way of its execution of the Agreement, the Construction Manager:

a. Represents that Construction Manager maintains, and will maintain during the term of the Agreement, insurance coverage from responsible companies duly authorized to do business in the State of Florida and deemed acceptable to Owner; and
b. Agrees that, insurance should not be cancelled without thirty (30) days' notice to the Owner and must be endorsed to provide same. Failure of Owner to obtain and maintain proper amounts of insurance at all times as called for herein shall constitute a material breach of the Agreement, which may result in immediate termination.

G. Certification Requirements – In order for the certificate of insurance to be accepted it must comply with the following:

a. The certificate holder shall be:
The City of Bradenton, A political subdivision of the
State of Florida
101 Old Main Street
Bradenton, FL 34205-7865
Reference: RFP# _____

b. Certificate shall be mailed to:
The City of Bradenton
Attn: _____
_____
Bradenton, FL _____

8.2 PAYMENT AND PERFORMANCE BOND.

A. BOND REQUIRED. For each project assigned, the Construction Manager shall post a Payment and Performance Bond in the amount of the GMP, in a form approved by the Owner.

B. DELIVERY. The Construction Manager shall deliver the required bond to the Owner at least three days before the commencement of any Construction Phase services.

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION. During both the Preconstruction and Construction Phases, claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Article VIII of the General Conditions.

9.2 OTHER PROVISIONS. Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the General Conditions.

9.3 EXTENT OF CONTRACT. This Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. Except as provided in Section 9.13 below, if anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.4 OWNERSHIP AND USE OF DOCUMENTS. Section 10.4 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

9.5 GOVERNING LAW; VENUE. This Agreement shall be governed by the laws of the State of Florida. Venue for any petition for writ of certiorari or other court action allowed by this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida.

9.6 ASSIGNMENT. The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

9.7 SUBSTANTIAL COMPLETION DEFINED. Substantial Completion shall be defined as provided in Article I of the General Conditions. In the event a temporary certificate of occupancy or completion is issued establishing Substantial Completion, the Construction Manager shall diligently pursue the issuance of a permanent certificate of occupancy or completion.

9.8 PROJECT MEETINGS. During the Construction Phase, there shall be project meetings, at the jobsite or other location acceptable to the parties, on a regularly scheduled basis. The meetings will be attended by a representative of the Construction Manager, Architect/Engineer and Owner. These representatives shall be authorized to make decisions that are not otherwise contrary to the requirements of this Agreement.

9.9 WEATHER. During the Construction Phase, any rainfall temperatures below 32

degrees Fahrenheit or winds greater than 25 m.p.h. which actually prevents Work on a given day, shall be considered lost time and an additional day added to the Contract Time, provided no work could be done on site, and provided written notice has been contemporaneously submitted to the Owner by the Construction Manager documenting same.

9.10 SHOP DRAWINGS; CRITICAL SUBMITTALS. In consideration of the impact of timely review of submittals and shop drawings on the overall progress of the Work, it is hereby agreed that the Owner shall cause its agents and design professionals to accomplish the review of any particular "critical" submittals and/or shop drawings and return same to the Construction Manager within fourteen (14) days.

9.11 PUNCH LIST. Within 30 days after obtainment of Substantial Completion, the Owner shall generate a "punch list" of all work items requiring remedial attention by the Construction Manager. Within 5 days thereafter the Architect/Engineer shall assign a fair value to the punch list items, which sum shall be deducted from the next scheduled progress payment to the Construction Manager. Upon satisfactory completion of the punch list items, as certified by the Architect/Engineer, the previously deducted sum shall be paid to the Construction Manager.

9.12 CLOSEOUT DOCUMENTATION. Within 30 days after obtainment of Substantial Completion and before final payment, Construction Manager shall gather and deliver to Owner all warranty documentation, all manufacturer's product and warranty literature, all manuals (including parts and technical manuals), all schematics and handbooks, and all as-built drawings.

9.13 GOVERNING PROVISIONS; CONFLICTS. In the event of a conflict between this Agreement and the Specifications or as between the General Conditions and the Specifications, the Specifications shall govern.

9.14 E-VERIFY. Section 448.09, Florida Statutes, makes it unlawful for any person to knowingly employ, hire, recruit, or refer, for private or public employment, an alien who is not duly authorized to work in the United States. Section 448.095, Florida Statutes, prohibits public employers, contractors, and subcontractors from entering into a contract unless each party to the contract registers and uses E-Verify. Construction Manager hereby represents that it is in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes. Construction Manager further represents that it will remain in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes, during the term of the Agreement. Construction Manager hereby warrants that it has not been terminated by a public employer for violating Section 448.095, Florida Statutes, within the year preceding the effective date of this Agreement. If Construction Manager has a contract terminated by a public employer for any such violation during the term of this contract, it shall provide immediate notice thereof to the Owner.

Construction Manager shall be required to complete an E-Verify Affidavit attesting to compliance with Section 448.09, Florida Statutes.

9.15 INDEPENDENT CONTRACTOR. The Construction Manager acknowledges that it is functioning as an independent contractor in performing under the terms of this Agreement, and it is not acting as an employee of the Owner.

9.16 WAIVERS. Neither this Agreement nor any portion of it may be modified or waived orally. However, each party (through its governing body or properly authorized officer) shall have the right, but not the obligation, to waive, on a case-by-case basis, any right or condition herein reserved or intended for the benefit or protection of such party without being deemed or considered to have waived such right or condition for any other case, situation, or circumstance and without being deemed or considered to have waived any other right or condition. No such waiver shall be effective unless made in writing with an express and specific statement of the intent of such governing body or officer to provide such waiver.

9.17 VALIDITY. Each of the Owner and Construction Manager represents and warrants to the other its respective authority to enter into this Agreement.

9.18 COVENANT TO DEFEND. Neither the validity of this Agreement nor the validity of any portion hereof may be challenged by any party hereto, and each party hereto hereby waives any right to initiate any such challenge. Furthermore, if this Agreement or any portion hereof is challenged by a third party in any judicial, administrative, or appellate proceeding (each party hereby covenanting with the other party not to initiate, encourage, foster, promote, cooperate with, or acquiesce to such challenge), the parties hereto collectively and individually agree, at their individual sole cost and expense, to defend in good faith its validity through a final judicial determination or other resolution, unless all parties mutually agree in writing not to defend such challenge or not to appeal any decision invalidating this Agreement or any portion thereof:

9.19 DISCLAIMER OF THIRD PARTY BENEFICIARIES; SUCCESSORS AND ASSIGNS. This Agreement is solely for the benefit of the parties hereto, and no right, privilege, or cause of action shall by reason hereof accrue upon, to, or for the benefit of any third party. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, corporation, partnership, trust, private entity, agency, or other governmental entity any right, privilege, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof. This Agreement shall be binding upon, and its benefits and advantages shall inure to, the successors and assigns of the parties hereto.

9.20 HEADINGS AND CAPTIONS. The headings and captions of articles, sections, and paragraphs used this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or be taken into consideration in interpreting this Agreement.

9.21 LEGAL REFERENCES. All references to statutory sections or chapters shall be construed to include subsequent amendments to such provisions, and to refer to the successor provision of any such provision. References to "applicable law" and "general law" shall be construed to include provisions of local, state and federal law, whether established by legislative action, administrative rule or regulation, or judicial decision.

9.22 SEVERABILITY. The provisions of this Agreement are declared by the parties hereto to be severable. In the event any term or provision of this Agreement shall be held invalid by a court of competent jurisdiction, such invalid term or provision should not affect the validity

of any other term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent thereat then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

9.23 ATTORNEY'S FEES AND COSTS. In any claim dispute procedure or litigation arising from this Agreement, each party hereto shall be solely responsible for paying its attorney's fees and costs regardless of the outcome of any such procedure or litigation.

9.24 NOTICES. All notices, comments, consents, objections, approvals, waivers, and elections under this Agreement shall be in writing and shall be given only by hand delivery for which a receipt is obtained, or certified mail, prepaid with confirmation of delivery requested, or by electronic mail with delivery confirmation. All such communications shall be addressed to the applicable addressees set forth below or as any party may otherwise designate in the manner prescribed herein.

To Owner:	City of Bradenton Attn: _____ _____ Bradenton, Florida _____
With a copy to:	Blalock Walters, P.A Attn: Scott E. Rudacille, Esquire 802 11th Street West Bradenton, Florida 34205
To Construction Manager:	P.J.Hayes, Inc dba Tandem Construction Attn: Dan Harris 5391 Lakewood Ranch Blvd North Suite 200 Sarasota, FL 34240

Notices, comments, consents, objections, approvals, waivers and elections shall be deemed given when received by the party for whom such communication is intended at such address herein specified, or such other physical address or email address as such party may have substituted by notice to the other.

9.25 PUBLIC RECORDS. To the extent applicable, the Construction Manager shall comply with the requirements of Florida's Public Records laws, specifically including the following:

A. Construction Manager shall keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the service;
B. Construction Manager shall provide the public with access to public records on the same terms and conditions that the Owner would provide and at a cost that does not

exceed the cost provided in Florida Statutes, Chapter 119, or as otherwise provided by law;

C. Construction Manager shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;

D. Construction Manager shall meet all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of Construction Manager upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential from public records disclosure requirements. All records stored electronically must be provided to Owner in a format that is compatible with Owner's information technology systems; and,

E. Construction Manager acknowledges that all information contained relating to the Agreement are public records, as defined in Chapter 119, "Public Records" of the Florida Statutes. No information should be labeled confidential unless exempted under said laws.

IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY OF BRADENTON CUSTODIAN OF PUBLIC RECORDS AT:
CITY CLERK
Phone: (941) 932-9400
Email: Cityclerk@Cityofbradenton.com
Mailing Address: 101 Old Main Street – Bradenton, FL 34205

9.26 CONFIDENTIAL SECURITY RECORDS.

A. Pursuant to Section 119.071(3), Florida Statutes, the following records (hereinafter referred to collectively as the "Confidential Security Records") are confidential and exempt from the disclosure requirements of Section 119.071(1), Florida Statutes:

1. A Security System Plan or portion thereof for any property owned by or leased to Owner or any privately owned or leased property held by Owner.

2. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by Owner.

3. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreational facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or

motel development in the possession of, submitted to Owner.

B. Construction Manager agrees that it shall not, as a result of a public records request or for any other reason disclose the contents of, or release or provide copies of the Confidential Security Records to any other party absent the express written authorization of the Owner or to comply with a court order requiring such release or disclosure. To the extent Construction Manager receives a request for such records, it shall immediately contact Owner who shall coordinate Owner's response to the request. Notwithstanding the foregoing, the Construction Manager shall:

1. Disclose or release Security System Plans to:

   a. The property owner or leaseholder; or

   b. Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual acts of terrorism, or to prosecute those persons who are responsible for such attempts or acts.

2. Disclose or release building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary and final formats, which depict the internal layout and structural elements of a building area, stadium, water treatment facility, or other structure owned or operated by Owner:

   a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

   b. To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by Owner and is contractually bound by the Construction Manager to comply with this Section; or

   c. Upon a showing of good cause before a court of competent jurisdiction.

C. For purposes of this Section, the term "Security System Plan" includes all:

1. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;

2. Threat assessments conducted by an agency or any private entity;

3. Threat response plans;

4. Emergency evacuation plans;

5. Sheltering arrangements; or

6. Manuals for security personnel, emergency equipment, or security training.

9.27 INDEMNIFICATION. The Construction Manager covenants and agrees to indemnify and save harmless the City of Bradenton, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of the Construction Manager, or any subcontractor (meaning anyone, including but not limited to consultants having a contract with the Construction Manager or a subcontractor for part of the services), or anyone directly or indirectly employed by the Construction Manager or by any subcontractor, or of anyone for whose acts the Construction Manager or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Construction Manager to indemnify, hold harmless, or defend the City of Bradenton from its own negligence. Nothing in the Agreement shall be deemed to affect the rights, privileges and immunities of the Owner to sovereign immunity under Florida law, or as set forth in Section 768.28, Florida Statutes.

ARTICLE 10
TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE.

A. RIGHT OF TERMINATION. Prior to execution by both parties of the GMP Addendum, the Owner may terminate this Agreement at any time without or without cause pursuant to Sections 14.1 and 14.2 of the General Conditions, and the Construction Manager may terminate this Agreement for any of the reasons described in Section 14.6 of the General Conditions.

B. COMPENSATION FOR PRECONSTRUCTION SERVICES. If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.A.

C. ADDITIONAL COMPENSATION FOR CONS1RUCTION SERVICES. If the Owner or Construction Manager terminates this Agreement pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.B, be paid an amount calculated as follows:

1. Take the Cost of the Work incurred by the Construction Manager.

2. Add the Construction Manager's Fee computed upon the Cost of the Work to the

date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as to Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

3. Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.C.l. To the extent that the Owner elects to take legal assignment of Subcontracts and purchase orders (including rental agreements), the Construction Manager shall as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such Subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such Subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of the GMP Addendum shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the Subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any Subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this Agreement not been terminated, the Construction Manager shall terminate such Subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE. Subsequent to execution by both parties of the GMP Addendum, the Agreement may be terminated as provided in Article 14 of the General Conditions.

A. LIMITATION ON PAYMENT; TERMINATION BY OWNER. In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.2 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.B and 10.1.C of this Agreement.

B. LIMITATION ON PAYMENT; TERMINATION BY CONSTRUCTION MANAGER. In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.6 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.B and 10.1.C above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the

Cost of the Work for Work not actually completed.

10.3 **SUSPENSION**. The Work may be suspended by the Owner as provided in Section 14.3 of the General Conditions. In such case, the term "Contract Sum" in that Section shall be understood to mean Cost of the Work.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the parties hereunto have caused this agreement to be executed on the date first above written.

Signed, sealed and delivered in the presence of:

ATTEST:

Tamara Melton, City Clerk

CITY OF BRADENTON, a municipal corporation

By: _____
Gene Brown, Mayor

ATTEST:

Dan Harris

Printed Signature

P.J.Hayes, Inc dba Tandem Construction

By: Brian M. Leaver
As its: Vice President

AGREEMENT FOR CONSTRUCTION MANAGEMENT AT RISK CONTINUING SERVICES FOR THE CITY OF BRADENTON

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Bradenton (the "Owner"), and Wharton-Smith, Inc., registered and licensed to do business in the State of Florida (License # CGC1511243) (the "Construction Manager").

WHEREAS, Owner solicited statements of qualifications from interested construction managers for continuing construction manager "at-risk" services for the City of Bradenton for projects within the City (the "Project");

WHEREAS, Construction Manager represents that it has expertise in the type of construction management services that will be required for the Project;

WHEREAS, Owner desires Construction Manager to provide the professional construction management services requisite to the implementation of the Project, and

WHEREAS, any Project implemented under this Agreement shall be limited to repairs, renovations, modifications, alterations, and new construction projects not to exceed $4,000,000 in construction cost; and

NOW THEREFORE, the Owner and the Construction Manager, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1
GENERAL PROVISIONS

1.1 RELATIONSHIP OF PARTIES. The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect/Engineer, Construction Manager and other persons or entities employed by the Owner for the Project.

1.2 GENERAL CONDITIONS. The general conditions of the Agreement shall be the attached General Conditions of the Construction Agreement, which is incorporated herein by reference. The term "Contractor" as used in the General Conditions shall mean the Construction Manager. The term "Contract Sum" as used in the General Conditions shall mean Guaranteed Maximum Price (GMP).

ARTICLE 2
CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Services. If the Owner and Construction Manager agree, after consultation with the Architect/Engineer, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

2.1 PRECONSTRUCTION PHASE.

A. SCOPE OF SERVICES. Construction Management at Risk services to be provided during the Preconstruction Phase shall include, but not be limited to, services found in Exhibit A to the General Conditions.

B. PRELIMINARY EVALUATION. The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other. These services shall typically be based on conceptual designs up to 30-percent design drawings.

C. CONSULTATION. The Construction Manager, with the Architect/Engineer, shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect/Engineer regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

D. PRELIMINARY PROJECT SCHEDULE. When Project requirements described in Section 3.I.A have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect/Engineer's review and the Owner's approval. The Construction Manager shall obtain the Architect/Engineer's approval of the portion of the preliminary Project schedule relating to the performance of the Architect/Engineer's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect/Engineer and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price (GMP) proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer.

E. PHASED CONSTRUCTION. The Construction Manager shall make

recommendations to the Owner and Architect/Engineer regarding the phased issuance of Project Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

F. PRELIMINARY COST ESTIMATES.

1. When the Owner has sufficiently identified the Project requirements and the Architect/Engineer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2. When schematic design documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the design development documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

3. When design development documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect/Engineer and approval by the Owner. During the preparation of the construction documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

4. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer.

G. SUBCONTRACTORS AND SUPPLIERS. The Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to the Owner and Architect/Engineer for their information a list of possible Subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect/Engineer will promptly reply in writing to the Construction Manager if the Architect/Engineer or Owner know of any objection to such Subcontractor or supplier. The receipt of such list shall not require the Owner or Architect/Engineer to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it waive the right of the Owner or Architect/Engineer later to object to or reject any proposed. Subcontractors or suppliers.

H. LONG LEAD TIME ITEMS. The Construction Manager shall recommend to the Owner and Architect/Engineer a schedule for procurement of long-lead-time items which

will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's GMP proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

I. EXTENT OF RESPONSIBILITY. The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the GMP. The recommendation and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Project Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Project Plans and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect/Engineer and Owner in writing.

J. EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS. The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity programs.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME.

A. TIMING. When the Project Plans and Specifications are sufficiently complete, the Construction Manager shall propose a GMP, which shall be the sum of the estimated Cost of the Work and the Contractor's Fee.

B. FURTHER DEVELOPMENT OF PROJECT PLANS AND SPECIFICATIONS. As the Project Plans and Specifications may not be finished at the time the GMP proposal is prepared, the Construction Manager shall provide in the GMP for further development of the Project Plans and Specifications by the Architect/Engineer that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, as required, shall be incorporated by Change Order.

C. CONTINGENCY. The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.B and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

D. BASIS OF GUARANTEED MAXIMUM PRICE. The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

1. A list of the Project Plans and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the GMP proposal.

2. A list of allowances and a statement of their basis.

3. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP proposal to supplement the information contained in the Project Plans and Specifications.

4. The proposed GMP, including a statement of the estimated costs organized by trade categories, allowances, contingency, and other items and the Fee that comprise the GMP.

5. The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the construction documents issuance dates upon which the date of Substantial Completion is based.

E. MEETING OF CONSTRUCTION TEAM. The Construction Manager shall meet with the Owner and Architect/Engineer to review the GMP proposal and the written statement of its basis. In the event that the Owner or Architect/Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal, its basis, or both.

F. ACCEPTANCE. Unless the Owner accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the GMP proposal shall not be effective without written acceptance by the Construction Manager.

G. NO COSTS IN ADVANCE. Prior to the Owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

H. GMP ADDENDUM. Upon acceptance by the Owner of the GMP proposal, the GMP and its basis shall be set forth in the GMP Addendum. The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

I. REVISIONS TO PROJECT PLANS AND SPECIFICATONS. The Owner shall authorize and cause the Architect/Engineer to revise the Project Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Addendum. Such revised Project Plans and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect/Engineer and Construction Manager. The Construction Manager shall promptly notify the Architect/Engineer and Owner if such revised Project Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

J. TAXES. The GMP shall include in the Cost of the Work only those taxes which are enacted at the time the GMP is established.

2.3 CONSTRUCTION PHASE.

A. GENERAL.

1. The Construction Phase shall commence on the earlier of:

   i. the owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed,

   ii. or the Owner's first authorization to the Construction Manager to:

      (a) award a Subcontract,

      (b) undertake construction Work with the Construction Manager's own forces, or

      (c) issue a purchase order for materials or equipment required for the Work.

B. ADMINISTRATION.

1. Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under Subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect/Engineer. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect/Engineer, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the GMP has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2. If the GMP has been established, and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect/Engineer (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be

accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the GMP by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the Owner.

3. Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.H and 7.1.1 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

4. The Construction Manager shall schedule and conduct a meeting at which the Owner, Architect/Engineer, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

5. Promptly after the Owner's acceptance of the GMP proposal, the Construction Manager shall prepare a schedule in accordance with Section 2.3 of the General Conditions, including the Owner's occupancy requirements.

6. The Construction Manager shall provide monthly written reports to the Owner and Architect/Engineer on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the Project Site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect/Engineer.

7. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect/Engineer at regular intervals.

2.4 PROFESSIONAL SERVICES. Sections 2.1 and 2.2 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

2.5 HAZARDOUS MATERIALS. Sections 2.4.U and 5.5 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3
OWNER'S RESPONSIBILITES

3.1 **INFORMATION AND SERVICES**.

A. GENERAL INFORMATION. The Owner shall provide full information in

a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

B. BUDGET. The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect/Engineer, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

C. STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS. In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in subsections 1 through 5, below, but shall exercise customary precautions relating to the performance of the Work.

1. Reports, surveys, drawings and tests concerning the conditions of the Project Site which are required by law.

2. Surveys describing physical characteristics, legal limitations and utility locations for the Project Site, and a written legal description of the Project Site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Project Site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

3. The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolations tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

4. Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

5. The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE. The Owner shall designate in writing its Owner's Project Representative who shall have express authority to bind the Owner

with respect to all matters requiring the Owner's approval or authorization. This Representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 5.2 of the General Conditions, the Architect/Engineer does not have such authority.

3.3 ARCHITECT/ENGINEER. The Owner shall retain an Architect/Engineer to provide basic services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in Article VI of the General Conditions. The Owner shall authorize and cause the Architect/Engineer to provide those additional services requested by the Construction Manager which must necessarily be provided by the Architect/Engineer for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect/Engineer and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect/Engineer.

3.4 LEGAL REQUIREMENTS. The Owner shall determine and advise the Architect/Engineer and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4
COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Services as follows:

4.1 COMPENSATION.

A. PRECONSTRUCTION SERVICES. For the Preconstruction Services described in Section 2.1, the Construction Manager's compensation shall be a negotiated amount.

If the Preconstruction Services are Provided as Stand Alone Services:

4.2 PAYMENTS.

A. TIMING. Subject to the requirements of Article III of the General Conditions, payments for Preconstruction Services shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

B. DUE DATES. Payments shall be made by Owner in accordance with the requirements of Section 218.735, Florida Statutes.

ARTICLE 5
COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

5.1 COMPENSATION. For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determined as follows:

The Construction Management Fee Percentage shall be Five percent (5 %) of the total Cost of the Work.

5.2 GUARANTEED MAXIMUM PRICE. The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided as the GMP in the GMP Addendum, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the GMP. Costs which would cause the GMP to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

5.3 CHANGES IN THE WORK

A. ADJUSTMENTS TO GMP. Adjustments to the GMP on account of changes in the Work subsequent to the execution of the GMP Addendum may be determined by any of the methods listed in Article V of the General Conditions.

B. "COST". In calculating adjustments to Subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the Owner and Construction Manager shall proceed in accordance with Section 5.6 of the General Conditions. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts. In calculating adjustments to the Agreement, the terms "cost'" and "costs" as used in the above-referenced General Conditions shall mean the Cost of the Work as defined in Article 6 of this Agreement.

C. CONSTRUCTION MANAGER'S FEE. If no specific provision is made in Section 5.l for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such that, in the aggregate, the application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

ARTICLE 6
COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

A. COST OF WORK. The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

B. LABOR COSTS.

1. Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the Project Site or, with the Owner's agreement, at off-site workshops.

2. Wages or salaries of the Construction Managers supervisory and administrative personnel when stationed at the Project Site with the Owner's agreement.

Classification	Name
Project Manager	TBD
Sr. Superintendent	TBD
Superintendent	TBD
Project Engineer	TBD

(If it is Intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be Included in the Cost of the Work; such personnel shall be identified below.)

3. Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

Classification	Labor Rate ($/Hour)
Project Executive	$105.76
Safety Manager	$96.02
Project Assistant	$41.64
Accountant	$47.83

4. Costs paid or incurred by the Construction Manager for taxes. insurance,

contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.B.l through 6.1.B.3.

C. SUBCONTRACT COSTS. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the Subcontracts.

D. COSTS MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION.

1. DIRECT PURCHASE ORDER (DPO) PROCESS

a. The Construction Manager at Risk (CMAR) identifies possible tax savings in agreement with the city's Public Works' representative.
b. The CMAR requests the city's Purchasing Department for a DPO (purchase order) based on a quote for materials on the project. The purchase order is to be issued for the materials and vendor outlined on the quote provided. The city's Public Works' representative is copied on the request.
c. The city's Purchasing Department issues a purchase order to the vendor on the quote for the full amount of the quote, or a "blanket" PO.
d. The city's Purchasing Department sends all invoices to the CMAR and the city's Public Works' representative for verification. The CMAR is responsible for receiving, logging and approving all invoices form the vendor for payment and emails the request for payment to Public Works.
e. The request for payment/invoice is reviewed the city's Public Works' representative.
f. Public Works authorizes the invoice for payment with accounting.
g. The invoice billing process repeats until the DPO runs out of money or is canceled.

A single DPO can be issued for a single purchase. However, if multiple purchases are made to the same vendor, it is more efficient to do a blanket DPO.

A Certificate of Entitlement is to be issued by Purchasing for each vendor utilizing a DPO

LANGUAGE TO INCLUDE WITH EVERY DPO:

SPECIAL INSTRUCTIONS: All responsibility & contact relative to the P.O. shall be with [name of the company], as to delivery, quality, and quantity.
Original invoices shall be sent to the above named contractor who will forward to the General Contractor. Payment will be delayed if this process is not followed.

2. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

3. Costs of materials described in the preceding Section 6.1.D.l in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner

at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

E. COSTS OF OTHER MATERIALS AND EOUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS.

1. Costs, including transportation, installation, maintenance, dismantling and removal of materials. supplies. temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the Project Site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

2. Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers which are provided by the Construction Manager at the Project Site. whether rented from the Construction Manager or others and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item.

3. Costs of removal of debris from the Project Site, including proper and legal disposal of same.

4. Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges. telephone at the Project Site and reasonable petty cash expenses of the Project Site office.

5. That portion of the reasonable travel and subsistence expenses of the Construction Manager’s personnel incurred while traveling in discharge of duties connected with the Work.

F. MISCELLANEOUS COSTS.

1. That portion directly attributable to this Contract of premiums for insurance and bonds.

2. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

3. Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

4. Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.H.2, reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the Project Site and reasonable petty cash expenses of the Project Site office.

5. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses; judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the GMP and provided that such royalties, fees and costs are not excluded by the Contract Documents.

6. Costs for electronic equipment and software, directly related to the Work and with the Owner's prior approval.

7. Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

8. Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

9. Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

10. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

G. EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK. The Cost of the Work shall also include costs described in Section 6.1.A which are incurred by the Construction Manager:

1. In taking action to prevent threatened damage, injury or loss in case of emergency affecting the safety of persons and property, as provided in Section 2.4.P of the General Conditions.

2. In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement or by the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or by the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers or others.

H. COSTS TO BE INCLUDED. The costs described in Sections 6.1.A through 6.1.G shall be included in the Cost of the Work notwithstanding any provisions of the General Conditions which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

6.2 COSTS NOT TO BE REIMBURSED

The Cost of the Work shall not include:

1. Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project Site office, except as specifically provided in Sections 6.1.B.2 and 6.1.B.3.

2. Expenses of the Construction Manager's principal office and offices other than the Project Site office, except as specifically provided in Section 6.1.

3. Overhead and general expenses, except as may be expressly included in Section 6.1.

4. The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

5. Rental costs of machinery and equipment, except as specifically provided in Section 6.1.E.2.

6. Except as provided in Section 6.1.H.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

7. Costs incurred in the performance of Preconstruction Services.

8. Except as provided in Section 6.1.F.10, any cost not specifically and expressly

described in Section 6.1.

9. Costs which would cause the GMP to be exceeded.

10. Costs for services performed during the Preconstruction Phase.

6.3 DISCOUNTS, REBATES AND REFUNDS

A. ACCURAL TO OWNER. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

B. DEDUCTION FROM COST OF WORK. Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.A shall be credited to the Owner as a deduction from the Cost of the Work.

6.4 ACCOUNTING RECORDS. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, in order to substantiate all costs incurred under this Agreement. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants or other Owner-authorized personnel shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGESS PAYMENTS

A. PROGRESS PAYMENTS. Subject to the requirements of Article III of the General Conditions, based upon Applications for Payment submitted to the Architect/Engineer by the Construction Manager and Certificates for Payment issued by the Architect/Engineer, the Owner shall make progress payments on account of the GMP to the Construction Manager as provided below and elsewhere in the Contract Documents.

B. PERIOD COVERED. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

C. DATE OF PAYMENT. Payments shall be made by Owner in accordance with the requirements of Section 218.735, Florida Statutes.

D. SUPPORTING DOCUMENTATION. With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect/Engineer to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

E. SCHEDULE OF VALUES. Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, unless objected to by the Architect/Engineer, shall be used as a basis for reviewing the Construction Manager's Application for Payment.

F. PERCENTAGE OF COMPLETION. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the schedule of values.

G. COMPUTATION. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 5.6 of the General Conditions, even though the GMP has not yet been adjusted by Change Order.

2. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the Project Site at a location agreed upon in writing, supported by paid receipts.

3. Add the Construction Manager's Fee, less retainage of five percent (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1. or, if

the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Construction Manager's Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

4. Subtract the aggregate of previous payments made by the Owner.

5. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.l.D to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner in such documentation.

6. Subtract amounts, if any, for which the Architect/Engineer has withheld or nullified a Certificate for Payment as provided in Section 3.3.C of the General Conditions.

H. SUBCONTRATOR RETAINAGE. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontracts.

I. REDUCTION IN RETAINAGE. Notwithstanding the foregoing, upon completion of at least fifty percent (50%) of the Work, as determined by the Architect/Engineer and Owner, the Owner shall reduce to two and one-half percent (2.5%) the amount of retainage withheld from the Construction Manager's Fee in each subsequent progress payment.

J. NO ADVANCE PAYMENTS. Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the Project Site.

K. RELIANCE ON INFORMATION. In taking action on the Construction Manager's Applications for Payment, the Architect/Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect/Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.D or other supporting data, that the Architect/Engineer has made exhaustive or continuous on-site inspections or that the Architect/Engineer has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner acting in the sole interest of the Owner.

7.2 FINAL PAYMENT.

A. CONDITIONS OF FINAL PAYMENT. Final payment shall be made by the Owner to the Construction Manager when (1) the Agreement has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct

nonconforming Work, as provided in Section 2.4.C of the General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner; and (3) a final Certificate for Payment has then been issued by the Architect/Engineer; such final payment shall be made by the Owner not more than thirty (30) days after the issuance of the Architect/Engineer's final Certificate for Payment, or as follows:

B. CALCULATION. The amount of the final payment shall be calculated as follows:

1. Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the GMP.

2. Subtract amounts, if any, for which the Architect/Engineer withholds, in whole or in part, a final Certificate for Payment as provided in Section 3.3.C of the General Conditions or other provisions of the Contract Documents.

3. Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner. Failing reimbursement by the Construction Manager and notwithstanding any other provisions of the Contract Documents to the contrary, Owner shall have the right to bring a direct action in the Circuit Court to recover such overpayment.

C. REVIEW. The Owner's fiscal staff will review and report in writing on the Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to the Architect/Engineer by the Construction Manager. Based upon such Cost of the Work as the Owner's fiscal staff report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.A have been met, the Architect/Engineer will, within seven days after receipt of the written report of the Owner's fiscal staff, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect/Engineer's reasons for withholding a certificate as provided in Section 3.3.C of the General Conditions.

D. ISSUANCE. If the Owner's fiscal staff report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect/Engineer. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within sixty (60) days after the Construction Manager's receipt of a copy of the Architect/Engineer's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's fiscal staff becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect/Engineer's final

Certificate for Payment.

E. ADDITIONAL REIMBURSEMENTS. It; subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2, (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8
INSURANCE AND BONDS

8.1 INSURANCE. Before performing any services, the Construction Manager shall procure and maintain, during the life of the Agreement, unless otherwise specified, the insurance listed below. The insurance policies shall be primary and written on forms acceptable to the Owner and placed with the insurance carriers approved and licensed by the State of Florida Office of Insurance Regulation and meet a minimum financial AM Best Company rating of no less than "A-Excellent: FSC VII."

The Owner, its officers, agents, and employees, shall be named as additional insureds on all policies required (excluding worker's compensation). No changes may be made to these specifications without specific prior written approval of the Owner. The Owner shall retain the right to review, at any time, coverage, form, and amount of insurance.

A. **Workers' Compensation/Employers Liability:**

Part One - There shall be no maximum limit (other than as limited by the applicable statute) for liability imposed by Florida Workers' Compensation Act or any other coverage required by the Agreement which are customarily insured under Part One of the standard Workers' Compensation Policy.

Part Two - The minimum amount of coverage required by the Agreement which are customarily insured under Part Two of the standard Workers' Compensation Policy shall be:

(Each Accident)	$100,000
(Disease-Policy Limit)	$500,000
(Disease-Each Employee)	$100,000

B. **Commercial General Liability**.

The limits are to be applicable only to services performed under the Agreement and shall be those that would be provided with the attachment

of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement (ISO Form CG 2503) a Commercial General Liability Policy with the following minimum limits.

General Aggregate:	
Products/Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (Any One Fire)	$Nil
Medical Expense (Any One Person)	$Nil

ADDITIONAL INSURED: The City of Bradenton, a political subdivision of the State of Florida shall be specifically named as additional insured on the Commercial General Liability Policy.

C. **Business Auto Policy**

Each Occurrence Bodily Injury and	
Property Damage Liability Combined	$300,000
Annual Aggregate (if applicable)	$1,000,000

ADDITIONAL INSURED: The City of Bradenton, a political subdivision of the State of Florida, shall be specifically named as additional insured on the Business Auto Policy.

D. **Certificates of Insurance and Copies of Policies**

Certificates of Insurance in triplicate evidencing the insurance coverage specified herein shall be filed with the Purchasing Division before services begin. The required certificates of insurance shall name the types of policy, policy number, date of expiration, amount of coverage, companies affording coverage, and also shall refer specifically to the Agreement. All insurance policies required herein shall be issued by companies that are authorized to do business under the laws of the State of Florida and hold an A.M. Best rating of A- or better. Insurance, as specified herein, shall remain in force and effect for the duration of the Agreement, including any warranty periods.

E. **Complete Policies**:

The entire and complete insurance policies required herein shall be provided to the Owner on request. If the initial insurance expires prior to the completion of services by the Construction Manager, renewal certificates of insurance and required copies of policies shall be furnished by the Construction Manager and delivered to the Purchasing Official thirty (30) days prior to the date of their expiration. Nothing herein shall in any manner create any liability of the Owner in connection with any claim against the

Construction Manager for labor, services, or materials, or of subcontractors; and nothing herein shall limit the liability of the Construction Manager or Construction Manager's sureties to the Owner, or to any workers, suppliers, material men or employees in relation to this Agreement.

F. By way of its execution of the Agreement, the Construction Manager:

a. Represents that Construction Manager maintains, and will maintain during the term of the Agreement, insurance coverage from responsible companies duly authorized to do business in the State of Florida and deemed acceptable to Owner; and
b. Agrees that, insurance should not be cancelled without thirty (30) days' notice to the Owner and must be endorsed to provide same. Failure of Owner to obtain and maintain proper amounts of insurance at all times as called for herein shall constitute a material breach of the Agreement, which may result in immediate termination.

G. Certification Requirements – In order for the certificate of insurance to be accepted it must comply with the following:

a. The certificate holder shall be:
The City of Bradenton, A political subdivision of the
State of Florida
101 Old Main Street
Bradenton, FL 34205-7865
Reference: RFP# _____

b. Certificate shall be mailed to:
The City of Bradenton
Attn: _____
_____
Bradenton, FL _____

8.2 PAYMENT AND PERFORMANCE BOND.

A. BOND REQUIRED. For each project assigned, the Construction Manager shall post a Payment and Performance Bond in the amount of the GMP, in a form approved by the Owner.

B. DELIVERY. The Construction Manager shall deliver the required bond to the Owner at least three days before the commencement of any Construction Phase services.

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION. During both the Preconstruction and Construction Phases, claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Article VIII of the General Conditions.

9.2 OTHER PROVISIONS. Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the General Conditions.

9.3 EXTENT OF CONTRACT. This Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. Except as provided in Section 9.13 below, if anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.4 OWNERSHIP AND USE OF DOCUMENTS. Section 10.4 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

9.5 GOVERNING LAW; VENUE. This Agreement shall be governed by the laws of the State of Florida. Venue for any petition for writ of certiorari or other court action allowed by this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida.

9.6 ASSIGNMENT. The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

9.7 SUBSTANTIAL COMPLETION DEFINED. Substantial Completion shall be defined as provided in Article I of the General Conditions. In the event a temporary certificate of occupancy or completion is issued establishing Substantial Completion, the Construction Manager shall diligently pursue the issuance of a permanent certificate of occupancy or completion.

9.8 PROJECT MEETINGS. During the Construction Phase, there shall be project meetings, at the jobsite or other location acceptable to the parties, on a regularly scheduled basis. The meetings will be attended by a representative of the Construction Manager, Architect/Engineer and Owner. These representatives shall be authorized to make decisions that are not otherwise contrary to the requirements of this Agreement.

9.9 WEATHER. During the Construction Phase, any rainfall temperatures below 32

degrees Fahrenheit or winds greater than 25 m.p.h. which actually prevents Work on a given day, shall be considered lost time and an additional day added to the Contract Time, provided no work could be done on site, and provided written notice has been contemporaneously submitted to the Owner by the Construction Manager documenting same.

9.10 SHOP DRAWINGS; CRITICAL SUBMITTALS. In consideration of the impact of timely review of submittals and shop drawings on the overall progress of the Work, it is hereby agreed that the Owner shall cause its agents and design professionals to accomplish the review of any particular "critical" submittals and/or shop drawings and return same to the Construction Manager within fourteen (14) days.

9.11 PUNCH LIST. Within 30 days after obtainment of Substantial Completion, the Owner shall generate a "punch list" of all work items requiring remedial attention by the Construction Manager. Within 5 days thereafter the Architect/Engineer shall assign a fair value to the punch list items, which sum shall be deducted from the next scheduled progress payment to the Construction Manager. Upon satisfactory completion of the punch list items, as certified by the Architect/Engineer, the previously deducted sum shall be paid to the Construction Manager.

9.12 CLOSEOUT DOCUMENTATION. Within 30 days after obtainment of Substantial Completion and before final payment, Construction Manager shall gather and deliver to Owner all warranty documentation, all manufacturer's product and warranty literature, all manuals (including parts and technical manuals), all schematics and handbooks, and all as-built drawings.

9.13 GOVERNING PROVISIONS; CONFLICTS. In the event of a conflict between this Agreement and the Specifications or as between the General Conditions and the Specifications, the Specifications shall govern.

9.14 E-VERIFY. Section 448.09, Florida Statutes, makes it unlawful for any person to knowingly employ, hire, recruit, or refer, for private or public employment, an alien who is not duly authorized to work in the United States. Section 448.095, Florida Statutes, prohibits public employers, contractors, and subcontractors from entering into a contract unless each party to the contract registers and uses E-Verify. Construction Manager hereby represents that it is in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes. Construction Manager further represents that it will remain in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes, during the term of the Agreement. Construction Manager hereby warrants that it has not been terminated by a public employer for violating Section 448.095, Florida Statutes, within the year preceding the effective date of this Agreement. If Construction Manager has a contract terminated by a public employer for any such violation during the term of this contract, it shall provide immediate notice thereof to the Owner.

Construction Manager shall be required to complete an E-Verify Affidavit attesting to compliance with Section 448.09, Florida Statutes.

9.15 INDEPENDENT CONTRACTOR. The Construction Manager acknowledges that it is functioning as an independent contractor in performing under the terms of this Agreement, and it is not acting as an employee of the Owner.

9.16 WAIVERS. Neither this Agreement nor any portion of it may be modified or waived orally. However, each party (through its governing body or properly authorized officer) shall have the right, but not the obligation, to waive, on a case-by-case basis, any right or condition herein reserved or intended for the benefit or protection of such party without being deemed or considered to have waived such right or condition for any other case, situation, or circumstance and without being deemed or considered to have waived any other right or condition. No such waiver shall be effective unless made in writing with an express and specific statement of the intent of such governing body or officer to provide such waiver.

9.17 VALIDITY. Each of the Owner and Construction Manager represents and warrants to the other its respective authority to enter into this Agreement.

9.18 COVENANT TO DEFEND. Neither the validity of this Agreement nor the validity of any portion hereof may be challenged by any party hereto, and each party hereto hereby waives any right to initiate any such challenge. Furthermore, if this Agreement or any portion hereof is challenged by a third party in any judicial, administrative, or appellate proceeding (each party hereby covenanting with the other party not to initiate, encourage, foster, promote, cooperate with, or acquiesce to such challenge), the parties hereto collectively and individually agree, at their individual sole cost and expense, to defend in good faith its validity through a final judicial determination or other resolution, unless all parties mutually agree in writing not to defend such challenge or not to appeal any decision invalidating this Agreement or any portion thereof:

9.19 DISCLAIMER OF THIRD PARTY BENEFICIARIES; SUCCESSORS AND ASSIGNS. This Agreement is solely for the benefit of the parties hereto, and no right, privilege, or cause of action shall by reason hereof accrue upon, to, or for the benefit of any third party. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, corporation, partnership, trust, private entity, agency, or other governmental entity any right, privilege, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof. This Agreement shall be binding upon, and its benefits and advantages shall inure to, the successors and assigns of the parties hereto.

9.20 HEADINGS AND CAPTIONS. The headings and captions of articles, sections, and paragraphs used this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or be taken into consideration in interpreting this Agreement.

9.21 LEGAL REFERENCES. All references to statutory sections or chapters shall be construed to include subsequent amendments to such provisions, and to refer to the successor provision of any such provision. References to "applicable law" and "general law" shall be construed to include provisions of local, state and federal law, whether established by legislative action, administrative rule or regulation, or judicial decision.

9.22 SEVERABILITY. The provisions of this Agreement are declared by the parties hereto to be severable. In the event any term or provision of this Agreement shall be held invalid by a court of competent jurisdiction, such invalid term or provision should not affect the validity

of any other term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent thereat then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

9.23 ATTORNEY'S FEES AND COSTS. In any claim dispute procedure or litigation arising from this Agreement, each party hereto shall be solely responsible for paying its attorney's fees and costs regardless of the outcome of any such procedure or litigation.

9.24 NOTICES. All notices, comments, consents, objections, approvals, waivers, and elections under this Agreement shall be in writing and shall be given only by hand delivery for which a receipt is obtained, or certified mail, prepaid with confirmation of delivery requested, or by electronic mail with delivery confirmation. All such communications shall be addressed to the applicable addressees set forth below or as any party may otherwise designate in the manner prescribed herein.

To Owner:	City of Bradenton Attn: _____ _____ Bradenton, Florida _____
With a copy to:	Blalock Walters, P.A Attn: Scott E. Rudacille, Esquire 802 11th Street West Bradenton, Florida 34205
To Construction Manager:	Wharton-Smith, Inc. Attn: Tom Iarossi 4912 W. La Salle Street Tampa, FL 33607

Notices, comments, consents, objections, approvals, waivers and elections shall be deemed given when received by the party for whom such communication is intended at such address herein specified, or such other physical address or email address as such party may have substituted by notice to the other.

9.25 PUBLIC RECORDS. To the extent applicable, the Construction Manager shall comply with the requirements of Florida's Public Records laws, specifically including the following:

A. Construction Manager shall keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the service;
B. Construction Manager shall provide the public with access to public records on the same terms and conditions that the Owner would provide and at a cost that does not

exceed the cost provided in Florida Statutes, Chapter 119, or as otherwise provided by law;

C. Construction Manager shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;

D. Construction Manager shall meet all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of Construction Manager upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential from public records disclosure requirements. All records stored electronically must be provided to Owner in a format that is compatible with Owner's information technology systems; and,

E. Construction Manager acknowledges that all information contained relating to the Agreement are public records, as defined in Chapter 119, "Public Records" of the Florida Statutes. No information should be labeled confidential unless exempted under said laws.

IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY OF BRADENTON CUSTODIAN OF PUBLIC RECORDS AT:
CITY CLERK
Phone: (941) 932-9400
Email: Cityclerk@Cityofbradenton.com
Mailing Address: 101 Old Main Street – Bradenton, FL 34205

9.26 CONFIDENTIAL SECURITY RECORDS.

A. Pursuant to Section 119.071(3), Florida Statutes, the following records (hereinafter referred to collectively as the "Confidential Security Records") are confidential and exempt from the disclosure requirements of Section 119.071(1), Florida Statutes:

1. A Security System Plan or portion thereof for any property owned by or leased to Owner or any privately owned or leased property held by Owner.

2. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by Owner.

3. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreational facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or

motel development in the possession of, submitted to Owner.

B. Construction Manager agrees that it shall not, as a result of a public records request or for any other reason disclose the contents of, or release or provide copies of the Confidential Security Records to any other party absent the express written authorization of the Owner or to comply with a court order requiring such release or disclosure. To the extent Construction Manager receives a request for such records, it shall immediately contact Owner who shall coordinate Owner's response to the request. Notwithstanding the foregoing, the Construction Manager shall:

1. Disclose or release Security System Plans to:

   a. The property owner or leaseholder; or

   b. Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual acts of terrorism, or to prosecute those persons who are responsible for such attempts or acts.

2. Disclose or release building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary and final formats, which depict the internal layout and structural elements of a building area, stadium, water treatment facility, or other structure owned or operated by Owner:

   a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

   b. To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by Owner and is contractually bound by the Construction Manager to comply with this Section; or

   c. Upon a showing of good cause before a court of competent jurisdiction.

C. For purposes of this Section, the term "Security System Plan" includes all:

1. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;

2. Threat assessments conducted by an agency or any private entity;

3. Threat response plans;

4. Emergency evacuation plans;

5. Sheltering arrangements; or

6. Manuals for security personnel, emergency equipment, or security training.

9.27 INDEMNIFICATION. The Construction Manager covenants and agrees to indemnify and save harmless the City of Bradenton, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of the Construction Manager, or any subcontractor (meaning anyone, including but not limited to consultants having a contract with the Construction Manager or a subcontractor for part of the services), or anyone directly or indirectly employed by the Construction Manager or by any subcontractor, or of anyone for whose acts the Construction Manager or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Construction Manager to indemnify, hold harmless, or defend the City of Bradenton from its own negligence. Nothing in the Agreement shall be deemed to affect the rights, privileges and immunities of the Owner to sovereign immunity under Florida law, or as set forth in Section 768.28, Florida Statutes.

ARTICLE 10
TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE.

A. RIGHT OF TERMINATION. Prior to execution by both parties of the GMP Addendum, the Owner may terminate this Agreement at any time without or without cause pursuant to Sections 14.1 and 14.2 of the General Conditions, and the Construction Manager may terminate this Agreement for any of the reasons described in Section 14.6 of the General Conditions.

B. COMPENSATION FOR PRECONSTRUCTION SERVICES. If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.A.

C. ADDITIONAL COMPENSATION FOR CONS1RUCTION SERVICES. If the Owner or Construction Manager terminates this Agreement pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.B, be paid an amount calculated as follows:

1. Take the Cost of the Work incurred by the Construction Manager.

2. Add the Construction Manager's Fee computed upon the Cost of the Work to the

date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as to Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

3. Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.C.l. To the extent that the Owner elects to take legal assignment of Subcontracts and purchase orders (including rental agreements), the Construction Manager shall as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such Subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such Subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of the GMP Addendum shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the Subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any Subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this Agreement not been terminated, the Construction Manager shall terminate such Subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE. Subsequent to execution by both parties of the GMP Addendum, the Agreement may be terminated as provided in Article 14 of the General Conditions.

A. LIMITATION ON PAYMENT; TERMINATION BY OWNER. In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.2 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.B and 10.1.C of this Agreement.

B. LIMITATION ON PAYMENT; TERMINATION BY CONSTRUCTION MANAGER. In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.6 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.B and 10.1.C above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the

Cost of the Work for Work not actually completed.

10.3 **SUSPENSION**. The Work may be suspended by the Owner as provided in Section 14.3 of the General Conditions. In such case, the term "Contract Sum" in that Section shall be understood to mean Cost of the Work.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the parties hereunto have caused this agreement to be executed on the date first above written.

Signed, sealed and delivered in the presence of:

ATTEST:

_____
Tamara Melton, City Clerk

CITY OF BRADENTON, a municipal corporation

By: _____
Gene Brown, Mayor

ATTEST:

Johnny Santos
Johnny SANTOS
Printed Signature 2/27/23

_____

By: Tom Iarossi
As its: Vice President

AGREEMENT FOR CONSTRUCTION MANAGEMENT AT RISK CONTINUING SERVICES FOR THE CITY OF BRADENTON

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Bradenton (the "Owner"), and Willis A. Smith Construction, Inc., registered and licensed to do business in the State of Florida (License # CGC1508975) (the "Construction Manager").

WHEREAS, Owner solicited statements of qualifications from interested construction managers for continuing construction manager "at-risk" services for the City of Bradenton for projects within the City (the "Project");

WHEREAS, Construction Manager represents that it has expertise in the type of construction management services that will be required for the Project;

WHEREAS, Owner desires Construction Manager to provide the professional construction management services requisite to the implementation of the Project, and

WHEREAS, any Project implemented under this Agreement shall be limited to repairs, renovations, modifications, alterations, and new construction projects not to exceed $4,000,000 in construction cost; and

NOW THEREFORE, the Owner and the Construction Manager, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1
GENERAL PROVISIONS

1.1 RELATIONSHIP OF PARTIES. The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect/Engineer, Construction Manager and other persons or entities employed by the Owner for the Project.

1.2 GENERAL CONDITIONS. The general conditions of the Agreement shall be the attached General Conditions of the Construction Agreement, which is incorporated herein by reference. The term "Contractor" as used in the General Conditions shall mean the Construction Manager. The term "Contract Sum" as used in the General Conditions shall mean Guaranteed Maximum Price (GMP).

ARTICLE 2
CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Services. If the Owner and Construction Manager agree, after consultation with the Architect/Engineer, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

2.1 PRECONSTRUCTION PHASE.

A. SCOPE OF SERVICES. Construction Management at Risk services to be provided during the Preconstruction Phase shall include, but not be limited to, services found in Exhibit A to the General Conditions.

B. PRELIMINARY EVALUATION. The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other. These services shall typically be based on conceptual designs up to 30-percent design drawings.

C. CONSULTATION. The Construction Manager, with the Architect/Engineer, shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect/Engineer regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

D. PRELIMINARY PROJECT SCHEDULE. When Project requirements described in Section 3.I.A have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect/Engineer's review and the Owner's approval. The Construction Manager shall obtain the Architect/Engineer's approval of the portion of the preliminary Project schedule relating to the performance of the Architect/Engineer's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect/Engineer and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price (GMP) proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer.

E. PHASED CONSTRUCTION. The Construction Manager shall make

recommendations to the Owner and Architect/Engineer regarding the phased issuance of Project Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

F. PRELIMINARY COST ESTIMATES.

1. When the Owner has sufficiently identified the Project requirements and the Architect/Engineer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2. When schematic design documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the design development documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

3. When design development documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect/Engineer and approval by the Owner. During the preparation of the construction documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

4. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer.

G. SUBCONTRACTORS AND SUPPLIERS. The Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to the Owner and Architect/Engineer for their information a list of possible Subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect/Engineer will promptly reply in writing to the Construction Manager if the Architect/Engineer or Owner know of any objection to such Subcontractor or supplier. The receipt of such list shall not require the Owner or Architect/Engineer to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it waive the right of the Owner or Architect/Engineer later to object to or reject any proposed. Subcontractors or suppliers.

H. LONG LEAD TIME ITEMS. The Construction Manager shall recommend to the Owner and Architect/Engineer a schedule for procurement of long-lead-time items which

will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's GMP proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

I. EXTENT OF RESPONSIBILITY. The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the GMP. The recommendation and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Project Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Project Plans and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect/Engineer and Owner in writing.

J. EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS. The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity programs.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME.

A. TIMING. When the Project Plans and Specifications are sufficiently complete, the Construction Manager shall propose a GMP, which shall be the sum of the estimated Cost of the Work and the Contractor's Fee.

B. FURTHER DEVELOPMENT OF PROJECT PLANS AND SPECIFICATIONS. As the Project Plans and Specifications may not be finished at the time the GMP proposal is prepared, the Construction Manager shall provide in the GMP for further development of the Project Plans and Specifications by the Architect/Engineer that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, as required, shall be incorporated by Change Order.

C. CONTINGENCY. The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.B and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

D. BASIS OF GUARANTEED MAXIMUM PRICE. The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

1. A list of the Project Plans and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the GMP proposal.

2. A list of allowances and a statement of their basis.

3. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP proposal to supplement the information contained in the Project Plans and Specifications.

4. The proposed GMP, including a statement of the estimated costs organized by trade categories, allowances, contingency, and other items and the Fee that comprise the GMP.

5. The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the construction documents issuance dates upon which the date of Substantial Completion is based.

E. MEETING OF CONSTRUCTION TEAM. The Construction Manager shall meet with the Owner and Architect/Engineer to review the GMP proposal and the written statement of its basis. In the event that the Owner or Architect/Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal, its basis, or both.

F. ACCEPTANCE. Unless the Owner accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the GMP proposal shall not be effective without written acceptance by the Construction Manager.

G. NO COSTS IN ADVANCE. Prior to the Owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

H. GMP ADDENDUM. Upon acceptance by the Owner of the GMP proposal, the GMP and its basis shall be set forth in the GMP Addendum. The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

I. REVISIONS TO PROJECT PLANS AND SPECIFICATONS. The Owner shall authorize and cause the Architect/Engineer to revise the Project Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Addendum. Such revised Project Plans and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect/Engineer and Construction Manager. The Construction Manager shall promptly notify the Architect/Engineer and Owner if such revised Project Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

J. TAXES. The GMP shall include in the Cost of the Work only those taxes which are enacted at the time the GMP is established.

2.3 CONSTRUCTION PHASE.

A. GENERAL.

1. The Construction Phase shall commence on the earlier of:

   i. the owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed,

   ii. or the Owner's first authorization to the Construction Manager to:

      (a) award a Subcontract,

      (b) undertake construction Work with the Construction Manager's own forces, or

      (c) issue a purchase order for materials or equipment required for the Work.

B. ADMINISTRATION.

1. Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under Subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect/Engineer. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect/Engineer, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the GMP has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2. If the GMP has been established, and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect/Engineer (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be

accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the GMP by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the Owner.

3. Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.H and 7.1.1 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

4. The Construction Manager shall schedule and conduct a meeting at which the Owner, Architect/Engineer, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

5. Promptly after the Owner's acceptance of the GMP proposal, the Construction Manager shall prepare a schedule in accordance with Section 2.3 of the General Conditions, including the Owner's occupancy requirements.

6. The Construction Manager shall provide monthly written reports to the Owner and Architect/Engineer on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the Project Site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect/Engineer.

7. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect/Engineer at regular intervals.

2.4 PROFESSIONAL SERVICES. Sections 2.1 and 2.2 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

2.5 HAZARDOUS MATERIALS. Sections 2.4.U and 5.5 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3
OWNER'S RESPONSIBILITES

3.1 **INFORMATION AND SERVICES.**

A. GENERAL INFORMATION. The Owner shall provide full information in

a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

B. BUDGET. The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect/Engineer, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

C. STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS. In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in subsections 1 through 5, below, but shall exercise customary precautions relating to the performance of the Work.

1. Reports, surveys, drawings and tests concerning the conditions of the Project Site which are required by law.

2. Surveys describing physical characteristics, legal limitations and utility locations for the Project Site, and a written legal description of the Project Site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Project Site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

3. The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolations tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

4. Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

5. The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE. The Owner shall designate in writing its Owner's Project Representative who shall have express authority to bind the Owner

with respect to all matters requiring the Owner's approval or authorization. This Representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 5.2 of the General Conditions, the Architect/Engineer does not have such authority.

3.3 ARCHITECT/ENGINEER. The Owner shall retain an Architect/Engineer to provide basic services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in Article VI of the General Conditions. The Owner shall authorize and cause the Architect/Engineer to provide those additional services requested by the Construction Manager which must necessarily be provided by the Architect/Engineer for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect/Engineer and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect/Engineer.

3.4 LEGAL REQUIREMENTS. The Owner shall determine and advise the Architect/Engineer and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4
COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Services as follows:

4.1 COMPENSATION.

A. PRECONSTRUCTION SERVICES. For the Preconstruction Services described in Section 2.1, the Construction Manager's compensation shall be a negotiated amount.

If the Preconstruction Services are Provided as Stand Alone Services:

4.2 PAYMENTS.

A. TIMING. Subject to the requirements of Article III of the General Conditions, payments for Preconstruction Services shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

B. DUE DATES. Payments shall be made by Owner in accordance with the requirements of Section 218.735, Florida Statutes.

ARTICLE 5
COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

5.1 COMPENSATION. For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determined as follows:

The Construction Management Fee Percentage shall be TBD percent (___%) of the total Cost of the Work.

5.2 GUARANTEED MAXIMUM PRICE. The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided as the GMP in the GMP Addendum, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the GMP. Costs which would cause the GMP to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

5.3 CHANGES IN THE WORK

A. ADJUSTMENTS TO GMP. Adjustments to the GMP on account of changes in the Work subsequent to the execution of the GMP Addendum may be determined by any of the methods listed in Article V of the General Conditions.

B. "COST". In calculating adjustments to Subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the Owner and Construction Manager shall proceed in accordance with Section 5.6 of the General Conditions. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts. In calculating adjustments to the Agreement, the terms "cost'" and "costs" as used in the above-referenced General Conditions shall mean the Cost of the Work as defined in Article 6 of this Agreement.

C. CONSTRUCTION MANAGER'S FEE. If no specific provision is made in Section 5.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such that, in the aggregate, the application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

ARTICLE 6
COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

A. COST OF WORK. The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

B. LABOR COSTS.

1. Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the Project Site or, with the Owner's agreement, at off-site workshops.

2. Wages or salaries of the Construction Managers supervisory and administrative personnel when stationed at the Project Site with the Owner's agreement.

Classification	Name
TBD	

(If it is Intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be Included in the Cost of the Work; such personnel shall be identified below.)

3. Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

Classification	Labor Rate ($/Hour)
TBD	

4. Costs paid or incurred by the Construction Manager for taxes. insurance,

contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.B.1 through 6.1.B.3.

C. SUBCONTRACT COSTS. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the Subcontracts.

D. COSTS MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION.

1. DIRECT PURCHASE ORDER (DPO) PROCESS

a. The Construction Manager at Risk (CMAR) identifies possible tax savings in agreement with the city's Public Works' representative.
b. The CMAR requests the city's Purchasing Department for a DPO (purchase order) based on a quote for materials on the project. The purchase order is to be issued for the materials and vendor outlined on the quote provided. The city's Public Works' representative is copied on the request.
c. The city's Purchasing Department issues a purchase order to the vendor on the quote for the full amount of the quote, or a "blanket" PO.
d. The city's Purchasing Department sends all invoices to the CMAR and the city's Public Works' representative for verification. The CMAR is responsible for receiving, logging and approving all invoices form the vendor for payment and emails the request for payment to Public Works.
e. The request for payment/invoice is reviewed the city's Public Works' representative.
f. Public Works authorizes the invoice for payment with accounting.
g. The invoice billing process repeats until the DPO runs out of money or is canceled.

A single DPO can be issued for a single purchase. However, if multiple purchases are made to the same vendor, it is more efficient to do a blanket DPO.

A Certificate of Entitlement is to be issued by Purchasing for each vendor utilizing a DPO

LANGUAGE TO INCLUDE WITH EVERY DPO:

SPECIAL INSTRUCTIONS: All responsibility & contact relative to the P.O. shall be with [name of the company], as to delivery, quality, and quantity.
Original invoices shall be sent to the above named contractor who will forward to the General Contractor. Payment will be delayed if this process is not followed.

2. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

3. Costs of materials described in the preceding Section 6.1.D.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner

at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

E. COSTS OF OTHER MATERIALS AND EOUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS.

1. Costs, including transportation, installation, maintenance, dismantling and removal of materials. supplies. temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the Project Site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

2. Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers which are provided by the Construction Manager at the Project Site. whether rented from the Construction Manager or others and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item.

3. Costs of removal of debris from the Project Site, including proper and legal disposal of same.

4. Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges. telephone at the Project Site and reasonable petty cash expenses of the Project Site office.

5. That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

F. MISCELLANEOUS COSTS.

1. That portion directly attributable to this Contract of premiums for insurance and bonds.

2. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

3. Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

4. Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.H.2, reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the Project Site and reasonable petty cash expenses of the Project Site office.

5. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses; judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the GMP and provided that such royalties, fees and costs are not excluded by the Contract Documents.

6. Costs for electronic equipment and software, directly related to the Work and with the Owner's prior approval.

7. Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

8. Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

9. Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

10. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

G. EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK. The Cost of the Work shall also include costs described in Section 6.1.A which are incurred by the Construction Manager:

1. In taking action to prevent threatened damage, injury or loss in case of emergency affecting the safety of persons and property, as provided in Section 2.4.P of the General Conditions.

2. In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement or by the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or by the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers or others.

H. COSTS TO BE INCLUDED. The costs described in Sections 6.1.A through 6.1.G shall be included in the Cost of the Work notwithstanding any provisions of the General Conditions which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

6.2 COSTS NOT TO BE REIMBURSED

The Cost of the Work shall not include:

1. Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project Site office, except as specifically provided in Sections 6.1.B.2 and 6.1.B.3.

2. Expenses of the Construction Manager's principal office and offices other than the Project Site office, except as specifically provided in Section 6.1.

3. Overhead and general expenses, except as may be expressly included in Section 6.1.

4. The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

5. Rental costs of machinery and equipment, except as specifically provided in Section 6.1.E.2.

6. Except as provided in Section 6.1.H.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

7. Costs incurred in the performance of Preconstruction Services.

8. Except as provided in Section 6.1.F.10, any cost not specifically and expressly

described in Section 6.1.

9. Costs which would cause the GMP to be exceeded.

10. Costs for services performed during the Preconstruction Phase.

6.3 DISCOUNTS, REBATES AND REFUNDS

A. ACCURAL TO OWNER. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

B. DEDUCTION FROM COST OF WORK. Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.A shall be credited to the Owner as a deduction from the Cost of the Work.

6.4 ACCOUNTING RECORDS. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, in order to substantiate all costs incurred under this Agreement. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants or other Owner-authorized personnel shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGESS PAYMENTS

A. PROGRESS PAYMENTS. Subject to the requirements of Article III of the General Conditions, based upon Applications for Payment submitted to the Architect/Engineer by the Construction Manager and Certificates for Payment issued by the Architect/Engineer, the Owner shall make progress payments on account of the GMP to the Construction Manager as provided below and elsewhere in the Contract Documents.

B. PERIOD COVERED. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

C. DATE OF PAYMENT. Payments shall be made by Owner in accordance with the requirements of Section 218.735, Florida Statutes.

D. SUPPORTING DOCUMENTATION. With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect/Engineer to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

E. SCHEDULE OF VALUES. Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, unless objected to by the Architect/Engineer, shall be used as a basis for reviewing the Construction Manager's Application for Payment.

F. PERCENTAGE OF COMPLETION. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the schedule of values.

G. COMPUTATION. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 5.6 of the General Conditions, even though the GMP has not yet been adjusted by Change Order.

2. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the Project Site at a location agreed upon in writing, supported by paid receipts.

3. Add the Construction Manager's Fee, less retainage of five percent (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1. or, if

the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Construction Manager's Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

4. Subtract the aggregate of previous payments made by the Owner.

5. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.D to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner in such documentation.

6. Subtract amounts, if any, for which the Architect/Engineer has withheld or nullified a Certificate for Payment as provided in Section 3.3.C of the General Conditions.

H. SUBCONTRATOR RETAINAGE. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontracts.

I. REDUCTION IN RETAINAGE. Notwithstanding the foregoing, upon completion of at least fifty percent (50%) of the Work, as determined by the Architect/Engineer and Owner, the Owner shall reduce to two and one-half percent (2.5%) the amount of retainage withheld from the Construction Manager's Fee in each subsequent progress payment.

J. NO ADVANCE PAYMENTS. Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the Project Site.

K. RELIANCE ON INFORMATION. In taking action on the Construction Manager's Applications for Payment, the Architect/Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect/Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.D or other supporting data, that the Architect/Engineer has made exhaustive or continuous on-site inspections or that the Architect/Engineer has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner acting in the sole interest of the Owner.

7.2 FINAL PAYMENT.

A. CONDITIONS OF FINAL PAYMENT. Final payment shall be made by the Owner to the Construction Manager when (1) the Agreement has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct

nonconforming Work, as provided in Section 2.4.C of the General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner; and (3) a final Certificate for Payment has then been issued by the Architect/Engineer; such final payment shall be made by the Owner not more than thirty (30) days after the issuance of the Architect/Engineer's final Certificate for Payment, or as follows:

B. CALCULATION. The amount of the final payment shall be calculated as follows:

1. Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the GMP.

2. Subtract amounts, if any, for which the Architect/Engineer withholds, in whole or in part, a final Certificate for Payment as provided in Section 3.3.C of the General Conditions or other provisions of the Contract Documents.

3. Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner. Failing reimbursement by the Construction Manager and notwithstanding any other provisions of the Contract Documents to the contrary, Owner shall have the right to bring a direct action in the Circuit Court to recover such overpayment.

C. REVIEW. The Owner's fiscal staff will review and report in writing on the Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to the Architect/Engineer by the Construction Manager. Based upon such Cost of the Work as the Owner's fiscal staff report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.A have been met, the Architect/Engineer will, within seven days after receipt of the written report of the Owner's fiscal staff, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect/Engineer's reasons for withholding a certificate as provided in Section 3.3.C of the General Conditions.

D. ISSUANCE. If the Owner's fiscal staff report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect/Engineer. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within sixty (60) days after the Construction Manager's receipt of a copy of the Architect/Engineer's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's fiscal staff becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect/Engineer's final

Certificate for Payment.

E. ADDITIONAL REIMBURSEMENTS. It; subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2, (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8
INSURANCE AND BONDS

8.1 INSURANCE. Before performing any services, the Construction Manager shall procure and maintain, during the life of the Agreement, unless otherwise specified, the insurance listed below. The insurance policies shall be primary and written on forms acceptable to the Owner and placed with the insurance carriers approved and licensed by the State of Florida Office of Insurance Regulation and meet a minimum financial AM Best Company rating of no less than "A-Excellent: FSC VII."

The Owner, its officers, agents, and employees, shall be named as additional insureds on all policies required (excluding worker's compensation). No changes may be made to these specifications without specific prior written approval of the Owner. The Owner shall retain the right to review, at any time, coverage, form, and amount of insurance.

A. **Workers' Compensation/Employers Liability:**

Part One - There shall be no maximum limit (other than as limited by the applicable statute) for liability imposed by Florida Workers' Compensation Act or any other coverage required by the Agreement which are customarily insured under Part One of the standard Workers' Compensation Policy.

Part Two - The minimum amount of coverage required by the Agreement which are customarily insured under Part Two of the standard Workers' Compensation Policy shall be:

(Each Accident)	$100,000
(Disease-Policy Limit)	$500,000
(Disease-Each Employee)	$100,000

B. **Commercial General Liability.**

The limits are to be applicable only to services performed under the Agreement and shall be those that would be provided with the attachment

of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement (ISO Form CG 2503) a Commercial General Liability Policy with the following minimum limits.

General Aggregate:	
Products/Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (Any One Fire)	$Nil
Medical Expense (Any One Person)	$Nil

ADDITIONAL INSURED: The City of Bradenton, a political subdivision of the State of Florida shall be specifically named as additional insured on the Commercial General Liability Policy.

C. **Business Auto Policy**

Each Occurrence Bodily Injury and	
Property Damage Liability Combined	$300,000
Annual Aggregate (if applicable)	$1,000,000

ADDITIONAL INSURED: The City of Bradenton, a political subdivision of the State of Florida, shall be specifically named as additional insured on the Business Auto Policy.

D. **Certificates of Insurance and Copies of Policies**

Certificates of Insurance in triplicate evidencing the insurance coverage specified herein shall be filed with the Purchasing Division before services begin. The required certificates of insurance shall name the types of policy, policy number, date of expiration, amount of coverage, companies affording coverage, and also shall refer specifically to the Agreement. All insurance policies required herein shall be issued by companies that are authorized to do business under the laws of the State of Florida and hold an A.M. Best rating of A- or better. Insurance, as specified herein, shall remain in force and effect for the duration of the Agreement, including any warranty periods.

E. **Complete Policies**:

The entire and complete insurance policies required herein shall be provided to the Owner on request. If the initial insurance expires prior to the completion of services by the Construction Manager, renewal certificates of insurance and required copies of policies shall be furnished by the Construction Manager and delivered to the Purchasing Official thirty (30) days prior to the date of their expiration. Nothing herein shall in any manner create any liability of the Owner in connection with any claim against the

Construction Manager for labor, services, or materials, or of subcontractors; and nothing herein shall limit the liability of the Construction Manager or Construction Manager's sureties to the Owner, or to any workers, suppliers, material men or employees in relation to this Agreement.

F. By way of its execution of the Agreement, the Construction Manager:

a. Represents that Construction Manager maintains, and will maintain during the term of the Agreement, insurance coverage from responsible companies duly authorized to do business in the State of Florida and deemed acceptable to Owner; and
b. Agrees that, insurance should not be cancelled without thirty (30) days' notice to the Owner and must be endorsed to provide same. Failure of Owner to obtain and maintain proper amounts of insurance at all times as called for herein shall constitute a material breach of the Agreement, which may result in immediate termination.

G. Certification Requirements – In order for the certificate of insurance to be accepted it must comply with the following:

a. The certificate holder shall be:
The City of Bradenton, A political subdivision of the
State of Florida
101 Old Main Street
Bradenton, FL 34205-7865
Reference: RFP# _____

b. Certificate shall be mailed to:
The City of Bradenton
Attn: _____
_____
Bradenton, FL _____

8.2 PAYMENT AND PERFORMANCE BOND.

A. BOND REQUIRED. For each project assigned, the Construction Manager shall post a Payment and Performance Bond in the amount of the GMP, in a form approved by the Owner.

B. DELIVERY. The Construction Manager shall deliver the required bond to the Owner at least three days before the commencement of any Construction Phase services.

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION. During both the Preconstruction and Construction Phases, claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Article VIII of the General Conditions.

9.2 OTHER PROVISIONS. Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the General Conditions.

9.3 EXTENT OF CONTRACT. This Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. Except as provided in Section 9.13 below, if anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.4 OWNERSHIP AND USE OF DOCUMENTS. Section 10.4 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

9.5 GOVERNING LAW; VENUE. This Agreement shall be governed by the laws of the State of Florida. Venue for any petition for writ of certiorari or other court action allowed by this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida.

9.6 ASSIGNMENT. The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

9.7 SUBSTANTIAL COMPLETION DEFINED. Substantial Completion shall be defined as provided in Article I of the General Conditions. In the event a temporary certificate of occupancy or completion is issued establishing Substantial Completion, the Construction Manager shall diligently pursue the issuance of a permanent certificate of occupancy or completion.

9.8 PROJECT MEETINGS. During the Construction Phase, there shall be project meetings, at the jobsite or other location acceptable to the parties, on a regularly scheduled basis. The meetings will be attended by a representative of the Construction Manager, Architect/Engineer and Owner. These representatives shall be authorized to make decisions that are not otherwise contrary to the requirements of this Agreement.

9.9 WEATHER. During the Construction Phase, any rainfall temperatures below 32

degrees Fahrenheit or winds greater than 25 m.p.h. which actually prevents Work on a given day, shall be considered lost time and an additional day added to the Contract Time, provided no work could be done on site, and provided written notice has been contemporaneously submitted to the Owner by the Construction Manager documenting same.

9.10 SHOP DRAWINGS; CRITICAL SUBMITTALS. In consideration of the impact of timely review of submittals and shop drawings on the overall progress of the Work, it is hereby agreed that the Owner shall cause its agents and design professionals to accomplish the review of any particular "critical" submittals and/or shop drawings and return same to the Construction Manager within fourteen (14) days.

9.11 PUNCH LIST. Within 30 days after obtainment of Substantial Completion, the Owner shall generate a "punch list" of all work items requiring remedial attention by the Construction Manager. Within 5 days thereafter the Architect/Engineer shall assign a fair value to the punch list items, which sum shall be deducted from the next scheduled progress payment to the Construction Manager. Upon satisfactory completion of the punch list items, as certified by the Architect/Engineer, the previously deducted sum shall be paid to the Construction Manager.

9.12 CLOSEOUT DOCUMENTATION. Within 30 days after obtainment of Substantial Completion and before final payment, Construction Manager shall gather and deliver to Owner all warranty documentation, all manufacturer's product and warranty literature, all manuals (including parts and technical manuals), all schematics and handbooks, and all as-built drawings.

9.13 GOVERNING PROVISIONS; CONFLICTS. In the event of a conflict between this Agreement and the Specifications or as between the General Conditions and the Specifications, the Specifications shall govern.

9.14 E-VERIFY. Section 448.09, Florida Statutes, makes it unlawful for any person to knowingly employ, hire, recruit, or refer, for private or public employment, an alien who is not duly authorized to work in the United States. Section 448.095, Florida Statutes, prohibits public employers, contractors, and subcontractors from entering into a contract unless each party to the contract registers and uses E-Verify. Construction Manager hereby represents that it is in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes. Construction Manager further represents that it will remain in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes, during the term of the Agreement. Construction Manager hereby warrants that it has not been terminated by a public employer for violating Section 448.095, Florida Statutes, within the year preceding the effective date of this Agreement. If Construction Manager has a contract terminated by a public employer for any such violation during the term of this contract, it shall provide immediate notice thereof to the Owner.

Construction Manager shall be required to complete an E-Verify Affidavit attesting to compliance with Section 448.09, Florida Statutes.

9.15 INDEPENDENT CONTRACTOR. The Construction Manager acknowledges that it is functioning as an independent contractor in performing under the terms of this Agreement, and it is not acting as an employee of the Owner.

9.16 WAIVERS. Neither this Agreement nor any portion of it may be modified or waived orally. However, each party (through its governing body or properly authorized officer) shall have the right, but not the obligation, to waive, on a case-by-case basis, any right or condition herein reserved or intended for the benefit or protection of such party without being deemed or considered to have waived such right or condition for any other case, situation, or circumstance and without being deemed or considered to have waived any other right or condition. No such waiver shall be effective unless made in writing with an express and specific statement of the intent of such governing body or officer to provide such waiver.

9.17 VALIDITY. Each of the Owner and Construction Manager represents and warrants to the other its respective authority to enter into this Agreement.

9.18 COVENANT TO DEFEND. Neither the validity of this Agreement nor the validity of any portion hereof may be challenged by any party hereto, and each party hereto hereby waives any right to initiate any such challenge. Furthermore, if this Agreement or any portion hereof is challenged by a third party in any judicial, administrative, or appellate proceeding (each party hereby covenanting with the other party not to initiate, encourage, foster, promote, cooperate with, or acquiesce to such challenge), the parties hereto collectively and individually agree, at their individual sole cost and expense, to defend in good faith its validity through a final judicial determination or other resolution, unless all parties mutually agree in writing not to defend such challenge or not to appeal any decision invalidating this Agreement or any portion thereof:

9.19 DISCLAIMER OF THIRD PARTY BENEFICIARIES; SUCCESSORS AND ASSIGNS. This Agreement is solely for the benefit of the parties hereto, and no right, privilege, or cause of action shall by reason hereof accrue upon, to, or for the benefit of any third party. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, corporation, partnership, trust, private entity, agency, or other governmental entity any right, privilege, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof. This Agreement shall be binding upon, and its benefits and advantages shall inure to, the successors and assigns of the parties hereto.

9.20 HEADINGS AND CAPTIONS. The headings and captions of articles, sections, and paragraphs used this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or be taken into consideration in interpreting this Agreement.

9.21 LEGAL REFERENCES. All references to statutory sections or chapters shall be construed to include subsequent amendments to such provisions, and to refer to the successor provision of any such provision. References to "applicable law" and "general law" shall be construed to include provisions of local, state and federal law, whether established by legislative action, administrative rule or regulation, or judicial decision.

9.22 SEVERABILITY. The provisions of this Agreement are declared by the parties hereto to be severable. In the event any term or provision of this Agreement shall be held invalid by a court of competent jurisdiction, such invalid term or provision should not affect the validity

of any other term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent thereat then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

9.23 ATTORNEY'S FEES AND COSTS. In any claim dispute procedure or litigation arising from this Agreement, each party hereto shall be solely responsible for paying its attorney's fees and costs regardless of the outcome of any such procedure or litigation.

9.24 NOTICES. All notices, comments, consents, objections, approvals, waivers, and elections under this Agreement shall be in writing and shall be given only by hand delivery for which a receipt is obtained, or certified mail, prepaid with confirmation of delivery requested, or by electronic mail with delivery confirmation. All such communications shall be addressed to the applicable addressees set forth below or as any party may otherwise designate in the manner prescribed herein.

To Owner:	City of Bradenton Attn: _____ _____ Bradenton, Florida _____
With a copy to:	Blalock Walters, P.A Attn: Scott E. Rudacille, Esquire 802 11th Street West Bradenton, Florida 34205
To Construction Manager:	Willis A. Smith Construction, Inc. Attn: F. John LaCivita, President 5001 Lakewood Ranch Blvd, Suite 100 Sarasota, FL 34240

Notices, comments, consents, objections, approvals, waivers and elections shall be deemed given when received by the party for whom such communication is intended at such address herein specified, or such other physical address or email address as such party may have substituted by notice to the other.

9.25 PUBLIC RECORDS. To the extent applicable, the Construction Manager shall comply with the requirements of Florida's Public Records laws, specifically including the following:

A. Construction Manager shall keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the service;
B. Construction Manager shall provide the public with access to public records on the same terms and conditions that the Owner would provide and at a cost that does not

exceed the cost provided in Florida Statutes, Chapter 119, or as otherwise provided by law;

C. Construction Manager shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;

D. Construction Manager shall meet all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of Construction Manager upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential from public records disclosure requirements. All records stored electronically must be provided to Owner in a format that is compatible with Owner's information technology systems; and,

E. Construction Manager acknowledges that all information contained relating to the Agreement are public records, as defined in Chapter 119, "Public Records" of the Florida Statutes. No information should be labeled confidential unless exempted under said laws.

IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY OF BRADENTON CUSTODIAN OF PUBLIC RECORDS AT:
CITY CLERK
Phone: (941) 932-9400
Email: Cityclerk@Cityofbradenton.com
Mailing Address: 101 Old Main Street – Bradenton, FL 34205

9.26 CONFIDENTIAL SECURITY RECORDS.

A. Pursuant to Section 119.071(3), Florida Statutes, the following records (hereinafter referred to collectively as the "Confidential Security Records") are confidential and exempt from the disclosure requirements of Section 119.071(1), Florida Statutes:

1. A Security System Plan or portion thereof for any property owned by or leased to Owner or any privately owned or leased property held by Owner.

2. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by Owner.

3. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreational facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or

motel development in the possession of, submitted to Owner.

B. Construction Manager agrees that it shall not, as a result of a public records request or for any other reason disclose the contents of, or release or provide copies of the Confidential Security Records to any other party absent the express written authorization of the Owner or to comply with a court order requiring such release or disclosure. To the extent Construction Manager receives a request for such records, it shall immediately contact Owner who shall coordinate Owner's response to the request. Notwithstanding the foregoing, the Construction Manager shall:

1. Disclose or release Security System Plans to:

   a. The property owner or leaseholder; or

   b. Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual acts of terrorism, or to prosecute those persons who are responsible for such attempts or acts.

2. Disclose or release building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary and final formats, which depict the internal layout and structural elements of a building area, stadium, water treatment facility, or other structure owned or operated by Owner:

   a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

   b. To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by Owner and is contractually bound by the Construction Manager to comply with this Section; or

   c. Upon a showing of good cause before a court of competent jurisdiction.

C. For purposes of this Section, the term "Security System Plan" includes all:

1. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;

2. Threat assessments conducted by an agency or any private entity;

3. Threat response plans;

4. Emergency evacuation plans;

5. Sheltering arrangements; or

6. Manuals for security personnel, emergency equipment, or security training.

9.27 INDEMNIFICATION. The Construction Manager covenants and agrees to indemnify and save harmless the City of Bradenton, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of the Construction Manager, or any subcontractor (meaning anyone, including but not limited to consultants having a contract with the Construction Manager or a subcontractor for part of the services), or anyone directly or indirectly employed by the Construction Manager or by any subcontractor, or of anyone for whose acts the Construction Manager or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Construction Manager to indemnify, hold harmless, or defend the City of Bradenton from its own negligence. Nothing in the Agreement shall be deemed to affect the rights, privileges and immunities of the Owner to sovereign immunity under Florida law, or as set forth in Section 768.28, Florida Statutes.

ARTICLE 10
TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE.

A. RIGHT OF TERMINATION. Prior to execution by both parties of the GMP Addendum, the Owner may terminate this Agreement at any time without or without cause pursuant to Sections 14.1 and 14.2 of the General Conditions, and the Construction Manager may terminate this Agreement for any of the reasons described in Section 14.6 of the General Conditions.

B. COMPENSATION FOR PRECONSTRUCTION SERVICES. If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.A.

C. ADDITIONAL COMPENSATION FOR CONS1RUCTION SERVICES. If the Owner or Construction Manager terminates this Agreement pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.B, be paid an amount calculated as follows:

1. Take the Cost of the Work incurred by the Construction Manager.

2. Add the Construction Manager's Fee computed upon the Cost of the Work to the

date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as to Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

3. Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.C.l. To the extent that the Owner elects to take legal assignment of Subcontracts and purchase orders (including rental agreements), the Construction Manager shall as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such Subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such Subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of the GMP Addendum shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the Subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any Subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this Agreement not been terminated, the Construction Manager shall terminate such Subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE. Subsequent to execution by both parties of the GMP Addendum, the Agreement may be terminated as provided in Article 14 of the General Conditions.

A. LIMITATION ON PAYMENT; TERMINATION BY OWNER. In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.2 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.B and 10.1.C of this Agreement.

B. LIMITATION ON PAYMENT; TERMINATION BY CONSTRUCTION MANAGER. In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.6 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.B and 10.1.C above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the

Cost of the Work for Work not actually completed.

10.3 SUSPENSION. The Work may be suspended by the Owner as provided in Section 14.3 of the General Conditions. In such case, the term "Contract Sum" in that Section shall be understood to mean Cost of the Work.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the parties hereunto have caused this agreement to be executed on the date first above written.

Signed, sealed and delivered in the presence of:

ATTEST:

Tamara Melton, City Clerk

CITY OF BRADENTON, a municipal corporation

By: _____
Gene Brown, Mayor

ATTEST:

Dawn M. Laidlaw, Corp. Sec.

Printed Signature

Willis A. Smith Construction, Inc.

By: Bretton Raymaker
As its: Vice President

AGENDA ITEM NO. 7.a

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 8, 2023

SUBMITTED BY: Robin Singer, Planning & Community Development

ITEM TYPE: Resolution

AGENDA SECTION: BUSINESS/ADVERTISING, PETITIONS, HEARINGS & COMMUNICATIONS

SUBJECT: Resolution 23-23

A RESOLUTION OF THE CITY OF BRADENTON, FLORIDA, EXTENDING A "ZONING IN PROGRESS" FOR A PERIOD OF 180 DAYS RELATED TO THE FOLLOWING USES UNDER THE CITY'S FORM-BASED CODE – SALE OF SECONDHAND MERCHANDISE, PAWN SHOPS, DRUG TREATMENT FACILITIES, DRUG TREATMENT CLINICS, HOMELESS SERVICE FACILITIES, RESIDENTIAL FACILITIES FOR HOMELESS INDIVIDUALS, INTERNET CAFES AND MASSAGE PARLORS; PROVIDING FOR OFFICIAL NOTICE OF THIS ZONING IN PROGRESS AND THE INTENT TO RETROACTIVELY APPLY REGULATIONS ADOPTED HEREUNDER; PROVIDING FOR A TEMPORARY ADMINISTRATIVE HOLD ON THE PROCESSING OF APPLICATIONS FOR THE USES DESCRIBED HEREIN; AND PROVIDING FOR AN EFFECTIVE DATE.

SUGGESTED ACTION: Approve Resolution 23-23

Is this item Quasijudicial?
No

Does this item require a public hearing?
No

EXPLANATION:
City Council approved Resolution 22-60 on September 14, 2022 to enact a zoning in progress which provided for a temporary administrative hold on process

applications for the sale of secondhand merchandise, pawn shops, drug treatment clinics, homeless services facilities, residential facilities for homeless individuals, internet cafes and massage parlors. Staff presented an Ordinance to amend the Form Based Code to the Planning Commission on December 21, 2022 and City Council on January 18, 2023. During the discussion of the amendment it was apparent that there are other sections of the Land Use Regulations that should be amended to meet the intent of the Ordinance. Because the changes to the Land Use Regulations were not part of the Ordinance that the Planning Commission reviewed or the legal advertisement, staff and the City Attorney agreed that the Ordinance should be revised and presented to the Planning Commission.

At the February 22, 2023 City Council meeting, City Council authorized staff to bring back this extension of Resolution 22-60. This extension will be for an additional 180 days from the prior expiration date of March 13, 2023, which will be September 9, 2023.

Staff intends to present the revised Ordinance to the Planning Commission at their next meeting and proceed to City Council in April, 2023.

FINANCIAL IMPACT:
No financial impact

ATTORNEY REVIEW/RECOMMENDATION:
Attorney Rudacille reviewed Resolution 23-23.

SUGGESTED MOTION:
Motion to approve Resolution 23-23.

ATTACHMENTS:
Resolution 23-23

CITY OF BRADENTON

RESOLUTION NO. 23-23

A RESOLUTION OF THE CITY OF BRADENTON, FLORIDA, EXTENDING A "ZONING IN PROGRESS" FOR A PERIOD OF 180 DAYS RELATED TO THE FOLLOWING USES UNDER THE CITY'S FORM-BASED CODE – SALE OF SECONDHAND MERCHANDISE, PAWN SHOPS, DRUG TREATMENT FACILITIES, DRUG TREATMENT CLINICS, HOMELESS SERVICE FACILITIES, RESIDENTIAL FACILITIES FOR HOMELESS INDIVIDUALS, INTERNET CAFES AND MASSAGE PARLORS; PROVIDING FOR OFFICIAL NOTICE OF THIS ZONING IN PROGRESS AND THE INTENT TO RETROACTIVELY APPLY REGULATIONS ADOPTED HEREUNDER; PROVIDING FOR A TEMPORARY ADMINISTRATIVE HOLD ON THE PROCESSING OF APPLICATIONS FOR THE USES DESCRIBED HEREIN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council has determined that it is in the best interest of the City of Bradenton that a zoning in progress be declared to allow for the study of certain uses under the form-based code to determine the proper use classifications, review criteria and restrictions under the City's form-based code; and

WHEREAS, Article 4, Table 4.7 of the City of Bradenton Form-Based Code, adopted under Ordinance 2930 and subsequently amended, lists the uses that are allowed, allowed by special use approval or are not allowed; and

WHEREAS, the sale of secondhand merchandise, pawn shops, drug treatment facilities, drug treatment clinics, homeless services facilities, residential facilities for homeless individuals, internet cafes and massage parlors are uses that are not explicitly listed in the form-based code; and

WHEREAS, the City Council wishes to review such uses to determine whether they should be allowed, how they should be classified, and whether they should be restricted, limited or subject to specific use criteria; and

WHEREAS, the City Council discussed their desire to review the uses described herein at the August 10, 2022, regular meeting and expressed their desire at that time to declare a zoning in progress as it relates to these uses.

WHEREAS, the City Council passed Resolution 22-60 at the September 14, 2022, regular meeting declaring a zoning in progress as it relates to these uses.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRADENTON, FLORIDA:

Section 1. It is hereby declared that the zoning in progress established under Resolution 22-60 is extended until September 9, 2023 to consider whether the uses of sale of secondhand merchandise, pawn shops, drug treatment facilities, drug treatment clinics, homeless services facilities, residential facilities for homeless individuals, internet cafes and massage parlors should be allowed, how they should be classified, and whether they should be restricted, limited or subject to specific use criteria under the form-based code,. It is the intent of the City Council that any regulations adopted pursuant to this zoning in progress will be applied retroactively to any applications received after August 10, 2022.

Section 2. For the duration of this zoning in progress the City will accept applications to establish any of the uses described herein but will not process these applications until the zoning in progress has expired, the City Council has determined that the zoning in progress is no longer necessary, or as otherwise may be required by law. Property owners and prospective business owners cannot assume stability in the code upon which they can rely in making investment backed decisions concerning the possibility of establishing these uses on property within the districts of the form-based code.

Section 3. The City Council directs the City Clerk to advertise a notice of this extension of the zoning in progress in a newspaper of general circulation in the City and directs staff to provide for notice to the City's permitting divisions.

Section 4. It is the intent of Council that potential applicants that wish to establish these uses, including the sale of secondhand merchandise, pawn shops, drug treatment facilities, drug treatment clinics, homeless services facilities, residential facilities for homeless individuals, internet cafes and massage parlors, are hereby on notice of this zoning in progress and that they pursue permits under existing regulations at their own risk and without the benefit of estoppel or vested right protection.

Section 5. Unless extended, the zoning in progress will expire on September 9, 2023. Consistent with Resolution 22-60, no further extensions of this zoning in progress will be approved.

Section 6. This Resolution shall take effect immediately upon adoption.

PASSED AND DULY ADOPTED by the City Council for the City of Bradenton, Florida, with a quorum present and voting, on this 8th Day of March, 2023.

_____
Gene Brown, Mayor

ATTEST:

_____
Tamara Melton, City Clerk

APPROVED AS TO FORM:

_____
Scott Rudacille, City Attorney

AGENDA ITEM NO. 8.a

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 8, 2023

SUBMITTED BY: Corey Fortin, City Administration

ITEM TYPE: Miscellaneous

AGENDA SECTION: NEW BUSINESS BY DEPARTMENT HEADS, CITY ATTORNEY AND COUNCIL

SUBJECT: Request for emergency authorization, if necessary, to engage environmental litigation compliance firm to assist with compliance with Consent Decree in Suncoast Waterkeepers litigation.

SUGGESTED ACTION: Motion to allow City Administrator to engage, if necessary, an environmental litigation compliance firm to assist with compliance with the Consent Decree in the Suncoast Waterkeepers litigation as an emergency authorization.

Is this item Quasijudicial?
No

Does this item require a public hearing?
No

ATTORNEY REVIEW/RECOMMENDATION:
N/A

SUGGESTED MOTION:
Motion to authorize the City Administrator to engage an environmental litigation compliance firm to assist with compliance with the Consent Decree in the Suncoast Waterkeepers litigation as an emergency authorization, if necessary.

ATTACHMENTS:

AGENDA ITEM NO. 8.b

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 8, 2023

SUBMITTED BY: Tamara Melton, City Administration

ITEM TYPE: Miscellaneous

AGENDA SECTION: NEW BUSINESS BY DEPARTMENT HEADS, CITY ATTORNEY AND COUNCIL

SUBJECT: Discussion regarding future City Hall locations, subject to City Council approval.

SUGGESTED ACTION: TBD

Is this item Quasijudicial?
No

Does this item require a public hearing?
No

FINANCIAL IMPACT:
N/A

ATTORNEY REVIEW/RECOMMENDATION:
N/A

SUGGESTED MOTION:
TBD

ATTACHMENTS:

AGENDA ITEM NO. 8.c

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 8, 2023

SUBMITTED BY: Tamara Melton, City Administration

ITEM TYPE: Miscellaneous

AGENDA SECTION: NEW BUSINESS BY DEPARTMENT HEADS, CITY ATTORNEY AND COUNCIL

SUBJECT: Discussion and motion regarding the negotiation of terms of purchase and Master Development Agreement regarding the considered disposition of City Hall with the remaining proposers.

SUGGESTED ACTION: Approval

Is this item Quasijudicial?
No

Does this item require a public hearing?
No

ATTORNEY REVIEW/RECOMMENDATION:
N/A

SUGGESTED MOTION:
Motion to authorize the City Administrator to discuss and negotiate terms of purchase and Master Development Agreement regarding the considered disposition of City Hall with the remaining proposers.

ATTACHMENTS: