


Procurement Division

(352) 334-5021(main)

Issue Date: 8/4/23

REQUEST FOR PROPOSALS: # PRCA-240008-WB
**Construction Manager at Risk Services for the Reconstruction of the Historic
Thelma Boltin Center**

PRE-PROPOSAL MEETING: Non-Mandatory Mandatory N/A Includes Site Visit
 DATE: August 15, 2023 TIME: 2:00PM
 LOCATION: Thelma Bolton Center – 516 NE 2nd Ave Gainesville, FL 32601

Legal ad (Gainesville Sun) publish date: August 10, 2023

QUESTION SUBMITTAL DUE DATE: August 22, 2023

DUE DATE FOR UPLOADING PROPOSAL: August 29, 2023 at 3:00PM
[Bid Opening Zoom Meeting link](#)

SUMMARY OF SCOPE OF WORK: City of Gainesville is seeking proposals from licensed contractors (hereinafter, referred to as proposers) to provide construction manager at risk services for the reconstruction of the historic Thelma Boltin Center.

For questions relating to this solicitation, contact: Wendy Byrne byrnewm@cityofgainesville.org

Proposer is not in arrears to City upon any debt, fee, tax or contract: Proposer is NOT in arrears Proposer IS in arrears
 Proposer is not a defaulter, as surety or otherwise, upon any obligation to City: Proposer is NOT in default Proposer IS in default

Proposer who receive this solicitation from sources other than City of Gainesville Procurement Division or DemandStar.com MUST contact the Procurement Division prior to the due date to ensure any addenda are received in order to submit a responsible and responsive offer. Uploading an incomplete document may deem the offer non-responsive, causing rejection.

ADDENDA ACKNOWLEDGMENT: Prior to submitting my offer, I have verified that all addenda issued to date are considered as part of my offer: Addenda received (list all) # _____

Legal Name of Proposer: _____

DBA: _____

Authorized Representative Name/Title: _____

E-mail Address: _____ FEIN: _____

Street Address: _____

Mailing Address (if different): _____

Telephone: (_____) _____ Fax: (_____) _____

By signing this form, I acknowledge I have read and understand, and my business complies with all General Conditions and requirements set forth herein; and,

 Proposal is in full compliance with the Specifications.

 Proposal is in full compliance with the Specifications except as specifically stated and attached hereto.

SIGNATURE OF AUTHORIZED REPRESENTATIVE: _____

SIGNER'S PRINTED NAME: _____ **DATE:** _____

PART 1 – REQUEST FOR PROPOSALS INFORMATION

Thank you for your interest in working with the City of Gainesville.

Pertinent information and required documents regarding this solicitation as part of a responsive offer are listed below:

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NOTE: The terms “bidder” and “proposer” are used interchangeably throughout this document.

1.1 DISTRIBUTION OF INFORMATION

The City posts and distributes information pertaining to its procurement solicitations on DemandStar (www.demandstar.com). **The City has transitioned from accepting hard (paper) copy submittals to accepting submittals through “E-Bidding”.** In order to submit a proposal response to this solicitation the consultant must be registered with DemandStar.

It is the responsibility of the proposer to monitor DemandStar. Properly registered proposers can expect to receive automatic notification of solicitations for bids and proposals, by participating purchasing entities. Proposers failure to retrieve available, required procurement information from DemandStar and include the appropriate documentation and information in solicitation responses may result in disqualification.

1.2 PRE-PROPOSAL MEETING/QUESTIONS/CLARIFICATIONS

If scheduled (refer to Proposal Cover Page), attending a pre-proposal meeting is strongly recommended as the project’s scope of work, procedures, and specifications will be discussed at this time. It is the only time during this RFP process that proposers may ask questions directly of the end user.

NOTE: For a proposer’s attendance of a mandatory pre-proposal meeting to count, the proposer must sign-in before the Procurement Specialist calls the end of that meeting. If the proposer is not signed in by that time, they will be disqualified from responding to the solicitation. If the mandatory pre-proposal meeting also includes a required site visit, then the proposer must sign in, both at the pre-proposal meeting, and again at the end of the site visit, in order to have their attendance count and not be disqualified from submitting a proposal.

NOTE: Failure to attend a mandatory pre-proposal meeting will result in disqualification of your proposal.

If special accommodations are needed in order to attend a pre-proposal meeting or a proposal opening, please contact the Procurement Division at least 72 hours in advance.

All questions that occur outside of the pre-proposal meeting must be submitted to Procurement only, and must be received by the date indicated on the Proposal Cover Page to be considered. Technical and/or specification questions will not be answered over the phone; they must be submitted by email directed to the Procurement Specialist conducting the solicitation (refer to Proposal Cover Page). All questions will be answered via Addendum which will be posted on DemandStar.com for proposer access. All addenda must be acknowledged by the proposer on the Proposal Cover Page.

*****IMPORTANT NOTICE REGARDING PROPOSAL OPENING*****

The scheduled proposal opening will occur via Zoom; the information to join is provided below. Attendance (live viewing) of the proposal opening is not required. However, to join the proposal opening you must register.

You are invited to a Zoom meeting.

When: August 29, 2023 03:00 PM Eastern Time (US and Canada) [Bid Opening Zoom Meeting Link](#)

All meetings and submittal deadlines are Eastern Time (ET).

1.3 RFP TIME TABLE

The anticipated schedule for the RFP and contract approval is as follows:

RFP available for distribution	August 4, 2023
Mandatory Pre-Proposal Meeting/Site Visit	August 15, 2023
Deadline for receipt of questions	August 22, 2023
Deadline for uploading of proposals	August 29, 2023 (3:00 p.m. local time)
Evaluation/Selection process	Week of September 5, 2023
Oral presentations, if conducted	Week of September 18, 2023
Projected award date	Week of September 25, 2023
Projected contract start date	TBD

All dates are subject to change. Proposers will be notified via Addendum posted in [DemandStar.com](#) in event of any schedule change.

1.4 PROHIBITION OF LOBBYING

To ensure fair consideration, consistent and accurate dissemination of information for all proposers, the City prohibits communication to or with any department, employee, or agent evaluating or considering proposals during the submission process, except as authorized by the Procurement Division representative. **Additionally, the City prohibits communication initiated by a proposer to any city official or employee evaluating or considering the proposals (up to and including the City Commissioners) before the time an award decision has been made.** Any communication between proposer and the City required to obtain information or clarification for preparing a proposal or to enable a proper, accurate evaluation of a proposal will be handled solely through the Procurement Division staff. **Any communications initiated between the proposer and the City outside these parameters may be grounds for disqualifying the offending proposer from consideration for award of the proposal and/or any future proposal.**

1.5 CONE OF SILENCE

During the Cone of Silence (formerly called Blackout period) as defined in the next paragraph, except as pursuant to an authorized appeal, no person may lobby (as defined in section 1.4), on behalf of a competing party in a particular procurement process, City officials or employees except the Procurement designated staff contact in the Procurement division. Violation of this provision shall result in disqualification of the party on whose behalf the lobbying occurred.

The Cone of Silence is the period between the issue date of the RFP, which allows for immediate submittals to the City of Gainesville Procurement Division for the Request for Proposals and the time the City Officials and Employee awards the contract.

1.6 DETERMINATION OF RESPONSIBILITY OF PROPOSERS

The specific qualifications of proposers for this specific Request for Proposals are included in Part 3, 3.2 Proposer Qualifications. Proposers must also demonstrate that it is responsible as defined in the City of Gainesville's [Financial Services Procedures Manual](#), Section 41-522, as may be amended.

As a part of the proposal evaluation process, City reserves the right to conduct a background investigation of proposer, including a record check by the Gainesville Police Department if the qualifications require it. Proposer submission of a proposal constitutes acknowledgment of the process and consent to such investigation.

No contract will be awarded to, any proposer who is in arrears to City upon any debt, fee, tax or contract, or who is a defaulter, as surety or otherwise, upon any obligation to City, or who is otherwise determined to be not responsible by City pursuant to Section 41-522, [Financial Services Procedures Manual](#), following:

These criteria consider the proposer's capability to perform:

- a) The ability of the proposer to successfully carry out a proposed contract.
- b) Past performance (including reference check), experience, business and financial capabilities, skills, technical organization, legal eligibility and reliability.
- c) Current litigation pending between the proposer and the City.
- d) Proposer has paid all debts owed to the City.
- e) Proposer possesses all required licenses.

If it is determined that the proposer is not responsible, City will notify proposer of its finding, including evidence used, and allow proposer the opportunity to come into compliance within three (3) business days of notification.

Successful Proposer must either update or complete City's vendor application, pay business tax (if applicable), and register with the State of Florida. Please be advised that the City Attorney's office will not approve a contract with any proposer unless the corporation or partnership is registered with the Division of Corporations with the State of Florida (www.sunbiz.org).

1.7 RESPONSIVENESS OF PROPOSAL

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in the RFP. A responsive proposal is one which follows the requirements of the RFP, includes all required documentation, is submitted in the format outlined in the RFP, is of timely submission (via upload to DemandStar.com), and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem the proposal non-responsive (see Section 41-444 of the [Financial Services Procedures Manual](#)).

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PART 2 – SCOPE OF WORK

2.1 GENERAL DESCRIPTION

The City of Gainesville (hereafter “City”) is requesting the submission of proposals from qualified construction managers at risk (CM) for the reconstruction of the historic Thelma Boltin Center.

2.2 SCOPE AND RELATED SERVICES

2.2.1 **Generally:** A Contract awarded under this RFP is defined as multi-phased contract for the projects listed below. The scope is limited to the projects noted below and for the services listed below.

2.2.2 **Construction Manager at Risk Services:** Provide a professional and construction team capable of providing the following services for the plan review and construction of a new Thelma Boltin Center.

2.2.2.1 Description: The work under this solicitation is generally described as construction of the facility described below. The scope will also include all site work required by State or local review agencies. Specifically:

The City of Gainesville is seeking a qualified Construction Management firm to participate in the reconstruction and partial restoration of the Thelma A. Boltin Center located at 516 NE 2nd Avenue in Gainesville, FL. The City is seeking a qualified CM firm to participate in both in pre-construction services, reviewing construction drawings for constructability, as well as managing the construction effort.

The 8,216 square foot structure was built in 1942 to entertain service members during World War II. The structure consists of a large auditorium with an asphalt shingle, gable roof and an attached accessory wing with a flat roof.

The west and south facing walls of the auditorium will remain. The entirety of the remaining structure will be demolished and rebuilt.

Wannemacher Johnson Architects, Inc., out of St. Petersburg, will be designing the new building after almost two years of meetings with focus groups, community members, and City Staff. Their design will increase the size of the facility to approximately 12,000 square feet to create more useful programming space. The primary feature will still be a large auditorium and stage with dedicated space for support functions. Preliminary estimates put the total cost of this job at \$5.6 Million.

This project is challenging since it’s a historic building in a historic neighborhood and will be subject to a great deal of public scrutiny. **Familiarity with this type of renovation/construction is required.** The Historic Preservation Board and Gainesville City Commission have directed us to keep the two most prominent auditorium walls which, unfortunately, are on the verge of collapse. The failing roof trusses have pushed the west wall out of plumb and we suspect the existing block walls are unlikely to have any filled cells or reinforcing bars. It’s also possible that the existing footings are undersized.

Managing to preserve those two walls may require that the work proceed in multiple stages.

Also note that the windows in the two walls that are to remain must be professionally restored per the direction of the Historic Preservation Board. This will leave open fenestrations for several months.

Wannemacher Johnson Architects intends to start finalizing their design in July 2023 and deliver a complete set of construction documents by the end of the year. Wild Spaces & Public Places sales tax money will be used to fund this project at the direction of the Gainesville City Commission.

2.2.2.2 Delivery: The delivery method for this solicitation is Construction Manager at Risk (CMAR), which consists of both a preconstruction phase and a construction phase with separate task assignments for each phase. During the preconstruction phase, the CM will assist the City in collaborating with the City's hired Architects/Engineers on the design, constructability, cost and construction schedule, ultimately developing a Guaranteed Maximum Price (GMP) proposal to construct the facility. Upon the City's acceptance of the GMP, the City may elect to issue a contract to the CM for the construction phase. If the City and the CM do not agree upon a GMP, the City will not award the construction phase to the CM. During the pre-construction and construction phase, the CM shall make recommendations to save money for the construction process and for on-going maintenance. The CM shall work closely with the City and its hired Architects/Engineers to bring the best value and quality to the project, as defined by the City. The CM will be required to assist in development various aspect of the budget and cost estimating for the project. The CM shall recommend the most beneficial and appropriate method to procure the trade contractors required to construct the facility, consistent with applicable state statutes. Recommendations for trade contractor participation may include self-performance, design-assist, design-build, competitive bids on complete construction documents, or a combination of methods. Once the City approves the recommended procurement methodology, the CM shall prepare the necessary bid packages and procure the trade contractors. CM shall structure trade contractor bid proposals to allow for independent design phase participation and subsequent construction phase participation if the construction phase is awarded to the CM. Although the City anticipates construction of each location in one phase, the City may benefit if the construction is divided into phasing components in addition to any phasing indicated in this RFP. Examples of possible phasing components are: demolition, hazardous material abatement, relocation of underground utilities, site preparation, separated buildings, interior finishes of shelled space, parking lots, and landscape. Phasing components shall be identified during the pre-construction phase by the CM and proposed by the CM to the City by location. The City's goal in reviewing with the phasing with CM is to minimize costs and/or expedite the completion the facility.

2.2.3 **Re-Use of Existing Plans:** In accordance with 287.055 Florida Statutes, any and all plans developed under this solicitation may be reused in subsequent task assignments if technically feasible. Professional fees shall be negotiated based on the level of effort require to update plan for reuse on different sites under this solicitation.

2.3 PROPOSER MINIMUM QUALIFICATIONS

- 2.3.1 Proposer's business shall demonstrate personnel and equipment support necessary for the completion of the requested services in a timely and efficient manner.
- 2.3.2 Proposer's business shall demonstrate that it complies with all applicable State and Federal licensing laws related to the services listed in this solicitation.
- 2.3.3 Proposer's business shall have verifiable experience renovating historic buildings.
- 2.3.4 By submitting a proposal, the proposer's business certifies that it has fully read and understands the RFP and has full knowledge of general scope, nature, and quality of the work to be performed, the general requirements of the services to be provided, and the conditions under which the services are to be performed.

2.4 CITY RESPONSIBILITY

- 2.4.1 The City will be responsible to the selected proposer for the following tasks:
 - 2.4.1.1 Monitoring proposer's progress for contract compliance.
 - 2.4.1.2 Provide information concerning project which is available in City files.
 - 2.4.1.3 Inform the Proposer of any known City design parameters or requirements.
 - 2.4.1.4 Payment to the Contractors and Proposers in accordance with Florida's Prompt Payment Act
 - 2.4.1.5 Responsive to questions in a timely manner

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PART 3 – HOW TO SUBMIT A PROPOSAL

Instructions to proposers: Proposals must contain each of the documents listed below; each fully completed, signed, and notarized as required. Required signatures for proposal forms may be applied using electronic signature software (i.e., DocuSign, Adobe Sign, etc.). Proposals submitted which do not include the following items may be deemed non-responsive and may not be considered for contract award.

3.1 PROPOSAL FORMAT

- Project Understanding and Approach: Describe your understanding of the objectives and scope of the requested services and your general approach to such. Include a general time frame for being able to provide the services contained in this RFP.
- Proposed Project Staff: Identify the key personnel who will be directly assigned to this project. State the qualifications and related experience of each member of the proposed project team of engineers and professionals.
- Qualifications of Firm: Provide pertinent information about the firm and related experience with similar projects. In addition, the firm should identify its total number of technical and professional personnel by discipline and training and further describe the total workload during the project period. Indicate what resources (professional and technical time) the firm would have available to allocate to the project.

3.2 CONTENT OF PROPOSAL

Required Documents:

The following documents are required to be included in the proposer's submission:

- a. RFP Cover Page
- b. Address each Minimum Qualification
- c. Provide a Statement of all Qualifications that will communicate the capabilities of the proposer to successfully complete the project
- d. Proposer Verification Form
- e. Drug-Free Workplace Form
- f. E-Verify Form
- g. Proposer's W-9
- h. Copy of any applicable, current licenses and/or certifications required by City/County/State
- i. Exceptions to the RFP (refer to Part 3, 3.5 Exception to the RFP)
- j. Investigation of Alleged Wrongdoings, Litigation/Settlements/Fines/Penalties

3.3 PROPOSAL SUBMISSION INSTRUCTIONS

The proposal response, containing all required documents, with authorized signatures, must be received by 3:00 p.m. on the due date indicated on the Proposal Cover Page for this project. The proposer's complete pdf response must be uploaded into DemandStar.com prior to the 3:00 p.m. deadline. This platform will not accept late submittals.

Upload proposal response as a pdf formatted document only, unless the solicitation states otherwise. The pdf document should be titled with proposer's name, proposal number, and, if the response is submitted in parts, include "Part # of x".

Modifications to or withdrawal of a proposer's submittal can be made up to the deadline date. Modifications and withdrawals must be documented in DemandStar.com in order to be recognized by the City. Any proposal not withdrawn will constitute an irrevocable offer, for a period of one hundred twenty (120) days, to provide the City adequate time to award the Contract for the services specified in this solicitation.

The response must be signed by an officer of the business who is legally authorized to enter into a contractual relationship in the name of the proposer. An authorized representative who is not an officer may sign the proposal, but must attach a corporate resolution granting authorization to the representative to execute on behalf of the business.

The submittal of a proposal by a proposer will be considered by the City as constituting an offer by the proposer to perform the required services.

3.4 DISCLOSURE AND CONFIDENTIALITY

Florida's Public Records Law, Chapter 119, Florida Statutes, includes numerous exemptions to the general requirement to disclose information to the public in response to a public record's request. Exemptions are found in various provisions of the Florida Statutes, including but not limited to Section 119.071, Florida Statutes (General exemptions from inspection or copying of public records), and Section 119.0713, Florida Statutes (Local government agency exemptions from inspection or copying of public records). Section 815.045, Florida Statutes (Trade secret information), provides that trade secret information as defined in Section 812.081, Florida Statutes (Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty) is confidential and exempt from disclosure because it is a felony to disclose such records. The Parties understand and agree that Florida's Public Records Law is very broad and that documents claimed by a Party to be confidential and exempt from public disclosure pursuant to the Public Records Law may in fact not be deemed such by a court of law. Accordingly, the following provisions shall apply:

- (i) Identifying Trade Secret or Otherwise Confidential and Exempt Information. For any records or portions thereof that proposer claims to be Trade Secret or otherwise confidential and exempt from public disclosure under the Public Records Law, proposer shall:
 - a. Specifically identify the records or specific portions thereof that are confidential and exempt and reference the particular Florida Statute that grants such status. Provide one redacted copy of the record and one copy of the record with the confidential and exempt information highlighted as outlined in items 1 and 2 on the following page. Proposer shall take care to redact only the confidential and exempt information within a record.
 - b. Provide an affidavit or similar type of evidence that describes and supports the basis for Proposer's claim that the information is confidential and exempt from public disclosure.
- (ii) Request for Trade Secret or Otherwise Confidential and Exempt Information.
 - a. In the event City receives a public records request for a record with information labeled by proposer as Trade Secret or otherwise as confidential and exempt, City will provide the public record requester with the redacted copy of the record and will notify proposer of the public records request.
 - b. However and notwithstanding the above, in the event that City in its sole discretion finds no basis for proposer's claim that certain information is Trade Secret or otherwise confidential and exempt under Florida's Public Records Law, then City shall notify proposer in writing of such conclusion and provide proposer a reasonable amount of time to file for declaratory action requesting a court of law to deem the requested information as Trade Secret or otherwise as confidential and exempt under Florida's Public Records Law. If proposer fails to file for declaratory action within the reasonable amount of time provided, then City will disclose the information requested.
 - c. If a public records lawsuit is filed against CITY requesting public disclosure of the information labeled by proposer as Trade Secret or otherwise as confidential and exempt, CITY shall notify proposer and proposer shall intervene in the lawsuit to defend the nondisclosure of such information under Florida's Public Records Law.
 - d. Proposer hereby indemnifies and holds CITY, its officers and employees harmless from any and all liabilities, damages, losses, and costs of any kind and nature, including but not limited to attorney's fees, that arise from or are in any way connected with proposer's claim that any information it provided to CITY is Trade Secret or otherwise confidential and exempt from public disclosure under Florida's Public Records Law.

How to Designate Trade Secret or Otherwise Confidential and Exempt Information

If a proposer believes that its response contains trade secret or otherwise confidential and exempt information (as defined by Florida or Federal law) and should be withheld from disclosure to the public, in such cases the proposer must provide a redacted copy of the proposal for public access.

- Redacted means that the confidential/proprietary information in the proposal has been obscured so that it cannot be read.
 - Unredacted means that the entire document, including the confidential/proprietary information, has not be obscured and is visible for the evaluation team to use in their evaluation process.
1. Upload a pdf version response of the complete UNREDACTED proposal. Include "UNREDACTED, CONFIDENTIAL" in document title. This is the version that will be used by the evaluators when they are reviewing your proposal. It is essential that the items that will be redacted are highlighted in yellow to prevent the evaluation team from discussing these items after the award. The first page of the document for the **unredacted** document should provide a general description of the information proposer has designated as confidential and/or exempt, and provide a reference to the appropriate Florida or Federal statute supporting the confidential and/or exempt classification.
 2. Upload a pdf version response of the REDACTED copy of the proposal. Include "REDACTED" in the document title. This copy will be used to support any public records requests that may arise from this solicitation.

How the City will Handle Material Identified as Trade Secret or Otherwise Confidential and Exempt Information

The City's evaluators will be provided with the complete unredacted proposal, including any trade secret or otherwise confidential and exempt information. The City evaluators will maintain the confidentiality of the information through the evaluation process, including any recorded evaluation team meetings.

In the event a public record request is made to view the information which proposer claims is confidential and/or exempt, the City will notify the proposer and give the proposer a reasonable opportunity (generally 2 business days) to institute appropriate legal action to prevent the disclosure of the information claimed as confidential and/or exempt.

All public records submitted to the City, including those claimed as confidential and/or exempt, will be retained by the City and will not be returned to a proposer at the conclusion of the solicitation process.

3.5 EXCEPTION TO THE RFP

Bidders may take exceptions to any of the terms of this RFP unless the RFP specifically states where exceptions may not be taken. Should a bidder take exception where none is permitted, the proposal will be rejected as non-responsive. All exceptions taken must be specific to allow the City a meaningful opportunity to evaluate and rank proposals.

Where exceptions are permitted, the City shall determine the acceptability of the proposed exceptions and the proposals will be evaluated based on the proposals as submitted. The City, after completing evaluations, may accept or reject the exceptions. Where exceptions are rejected, the City may request that the bidder furnish the services or goods described herein, or negotiate an acceptable alternative.

3.6 ONLY ONE PROPOSAL

Only one proposal from any individual, firm, corporation, organization or agency under the same or different name shall be considered. Should it appear to the City that any proposer has a financial interest in more than one submission under this solicitation, all proposals in which such proposer has a financial interest will be rejected. A subproposer is permitted to appear in more than one proposal for the same RFP, as long as the subproposer is not a prime proposer in any of the submittals. The City considers a financial interest to include, but not be limited, to joint ventures and partnerships.

3.7 FULLY INFORMED PROPOSER

A proposer is expected to fully inform itself as to the requirements of the Specifications and Contract terms and conditions; failure to do so will be at its own risk. A proposer shall not expect to secure relief on the plea of error.

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PART 4 – EVALUATION PROCESS

4.1 EVALUATION CRITERIA

a) Selection and Evaluation Criteria

Proposals will be evaluated in accordance with the procedures described in the City's [Professional Services Evaluation Handbook](#) included with this solicitation with the following exceptions: Price.

The proposals will be evaluated using the following process: Qualifications Evaluation, Written Proposal Evaluation and Presentation/Interview Evaluation, and Other Factors as deemed appropriate. The City shall consider the ability of the firm's professional personnel, willingness to meet time and budget requirements, workload, and past performance. The Evaluation process provides a structured means for consideration of all these areas.

b) Technical Qualifications Evaluation

The Technical Qualifications Evaluation will assess each responding firm's ability based on experience and qualifications of key team members, the firm's capability of meeting time and budget requirements, and the firm's record with regard to this type of work, particularly in the City of Gainesville or in the State of Florida. This stage does not involve review and evaluation of a proposal addressing the project scope of work. Consideration will be given to the firm's current workload, financial stability and location where the majority of the technical work will be produced. The City will not be impressed with excessive amounts of boilerplate, excessive numbers of resumes, excessive length of resumes, excessive numbers of photographs, work that distant offices have performed, or work not involving personnel to be assigned to the proposed project.

c) Written Proposal Evaluation

The Written Proposal Evaluation will assess the firm's understanding of the project and the proposed approach to be undertaken as addressed in a written proposal. The evaluation process will assess how effectively the requirements of the scope of services have been addressed. The written proposal should identify a project manager and other key members of the project/service team. It should relate the capabilities of the project/service team to the requirements of the scope of services.

d) Presentation/Interview Evaluation

The Proposal Presentation/Interview Evaluation is based on an oral presentation that addresses both the technical qualifications of the firm and the approach to the project. Importance is given to the firm's understanding of the project scope of work, the placement of emphasis on various work tasks, and the response to questions. The evaluation process will assess the project manager's capability and understanding of the project and his/her ability to communicate ideas. The role of key members of the project/service team should be established based on the scope of services and the firm's approach to the project/service. The role of any subcontracted firm in the proposal should be clearly identified. Unique experience and exceptional qualifications may be considered with emphasis on understanding of the project/service, particularly "why it is to be done" as well as "what is to be done". The City of Gainesville will not be impressed with excessive boilerplate, excessive participation by "business development" personnel, and the use of "professional" presenters who will not be involved in the project or future presentations.

e) Other factors

The Other Factors to be considered, based upon the specific project (but not limited to), are those items, such as Small or Service-Disabled Veteran Business and/or Local Preference. Fee proposals, when requested and deemed appropriate, are also to be considered in the evaluation process, where the request for such fees is in accordance with the City's Procurement Policies and Procedures.

PART 5 – SELECTION PROCESS

The proposer will be selected from qualified businesses submitting proposal as further described in Part 3, 3.1, “Proposal Format” of this RFP. A copy of the proposer’s current Florida Professional Registration Certificate must be provided. If the proposer is a corporation, it must be chartered to conduct business in Florida.

Evaluation and selection of the proposer will be in accordance with the requirements of the Consultants’ Competitive Negotiations Act (CCNA) and the City’s RFP procedure as stated herein. A brief description of this process follows:

1. Evaluators consisting of City staff will review the proposals. The evaluation process provides a structured means for consideration of all proposals.
2. Upon review and evaluation written proposals, the City will select no less than three (3) firms for further discussion or presentations based on ranking. The proposers shall then further detail their qualifications, approach to the project and ability to furnish the required services during the presentation. Firms selected for further presentations must provide one (1) electronic copy of materials presented in PDF format on a USB Flash drive.
3. The City shall then select and rank no less than three (3) firms in order of preference who are deemed to be the most highly qualified to perform the required services, in accordance with the procedures described in the City's [Professional Services Evaluation Handbook](#). The City Commission, if applicable, will then be requested to approve the ranking and authorize contract negotiation and execution as per CCNA.
4. The City will negotiate a contract with the top ranked firm for professional services. Should the City be unable to negotiate a satisfactory contract, negotiations will be terminated and negotiations will be initiated with the second most qualified firm. Should the City be unable to negotiate a satisfactory contract with any of the selected firms, then the City shall reject the bid and may seek to re-solicit responses in the future.

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PART 6 – AWARD

6.1 TIE PROPOSALS

Whenever two or more bids which are evaluated as equal with respect to price, quality and service are received, preference shall be given in the following order: (1) Bidders submitting the attached Drug-Free Workplace form with their bid/proposal certifying they have a drug free workplace in accordance with Section 287.087, Florida Statutes; (2) Bidders located within the City of Gainesville, if not subject to the Local Preference Ordinance; (3) Bidders located within Alachua County; (4) Bidders located within the State of Florida; and (5) coin toss.

6.2 DRUG-FREE WORKPLACE

Preference shall be given to proposers providing a certification with their qualifications certifying they have a drug-free workplace whenever two or more proposal which are equal with respect to price, quality, and service are received in accordance with Section 287.087, Florida Statutes. The attached form should be filled out and returned with the qualifications in order to qualify for this preference.

6.3 CONTRACT TERMS AND CONDITIONS

The City may award a contract on the basis of initial offers received, without discussions. A sample contract is attached to the bid. Therefore, each initial offer should contain the bidder's best terms from a cost or price and technical standpoint and any changes to the sample contract.

The City reserves the right to enter into contract negotiations with the selected bidder regarding the terms and conditions of the contract and technical terms. Price will not be negotiated. If the City and the selected bidder cannot negotiate a successful contract, the City may terminate said negotiations and begin negotiations with the next selected bidder. This process will continue until a contract has been executed or all bidders have been rejected. No bidder shall have any rights against the City arising from such negotiations.

6.4 CONTRACT AWARD

The award(s), if any, shall be made to the bidder(s) whose proposal(s) shall be deemed by the City to be in the best interest of the City. The decision of the City of whether to make the award(s) and which proposal is in the best interest of the City shall be final. Successful Bidder must either update or complete City's supplier application, pay business tax (if applicable), and register with the State of Florida (www.sunbiz.org) (if required by law).

6.5 CONTRACT

The Contract to be entered into will designate the successful bidder as the City's Contractor. The terms and conditions in the Sample Contract, Part 8, shall be applicable and binding. The successful bidder will be required to execute an agreement with the City in substantially the same format as found in Part 8.

6.6 RFP PROTEST

Participants in this solicitation may protest the RFP specifications or award in accordance with Section 41-580 of the [Financial Services Procedures Manual](#).

6.7 RFP POSTPONEMENT/CANCELLATION/WAIVER OF IRREGULARITIES

The City may, at its sole and absolute discretion, reject any and all, or parts of any and all, proposals; re-advertise this RFP; postpone or cancel, at any time, this RFP process; or waive any irregularities in this RFP or in the proposals received as a result of this RFP. See Section 41-444 [Financial Services Procedures Manual](#).

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PART 7 – GENERAL INFORMATION

7.1 REIMBURSABLES

If travel is involved in the execution of an awarded contract for this solicitation, should any air travel be required the City's travel policy allows for Coach air travel only. All other travel will be billed in accordance with the Federal General Services Administration rates which can be found at: <https://www.gsa.gov/travel/plan-book/per-diem-rates>. In addition, long distance phone calls, printing, and other administrative costs may be billed at cost only -no mark-up. Evidence of these expenditures will be submitted when invoicing the City. Travel and administrative costs should be identified in the Price Proposal.

7.2 LOCAL PREFERENCE

In bidding of, or letting contracts for procurement of, supplies, materials, equipment and services, as described in the purchasing policies, the city commission, or other purchasing authority, may give a preference to local businesses in making such purchase or awarding such contract in an amount not to exceed five percent of the local business' total bid price, and in any event the cost differential should not exceed \$25,000.00. Total bid price shall include not only the base bid price but also all alterations to that base bid price resulting from alternates which were both part of the bid and actually purchased and awarded by the City Commission or other authority. In the case of requests for proposals, letter of interest, best evaluated bids, qualifications or other solicitations and competitive negotiation and selection in which objective factors are used to evaluate the responses. Local Businesses are assigned five (5) percent of the total points of the total evaluation points.

Local business means the vendor has a valid business tax receipt, issued by the City of Gainesville at least six months prior to bid or proposal opening date, to do business in said locality that authorizes the business to provide the goods, services, or construction to be purchased, and a physical business address located within the limits of said locality, in an area zoned for the conduct of such business, from which the vendor operates or performs business on a day-to-day basis. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In order to be eligible for local preference, in the Bid or RFQ evaluation, the vendor must provide a copy of the business tax receipt and Zoning Compliance Permit. For more information on City's Local Preference Policy: [Municipal Code Article X Local Preference Policy](#).

7.3 SMALL AND SERVICE-DISABLED VETERAN BUSINESS PARTICIPATION

Small or Service-Disabled Veteran's Business Enterprise Definition: A Small Business or a Service-Disabled Veteran's Business, which is duly licensed and authorized to engage in business and maintains a permanent principal place of operation with full time personnel within Alachua, Bradford, Columbia, Gilchrist, Levy, Putnam, or Union County and possess a current City business tax receipt as required, and is so certified by the Small and Service-Disabled Veteran's Business Program Coordinator.

It is the policy of the City of Gainesville that small and service-disabled veteran businesses as defined in the Small and Service-Disabled Veteran Business Program, have the maximum practical opportunity to participate in contracting opportunities provided by the City. In keeping with this policy, each bidder is asked to state whether it will utilize small and service-disabled veteran businesses that are eligible for assistance to perform work on the project(s) being advertised.

For bidders not yet certified by the City, a small and service-disabled veteran application may be accessed via the [Diversity Business Management System](#) website. To be considered as a certified small and/or service-disabled veteran business, a bidder must have a current certificate at the time of the solicitation submittal due date. For more information on certified small and service-disabled veteran businesses, please visit the [Office of Equal Opportunity](#) website.

7.4 LIVING WAGE POLICY & COMPLIANCE

Living Wage requirements, Ordinance 020663, as amended in Ordinance 030168, and in Ordinance 180999, and as shown on the City's web page, applies to contracts solicited by the City after midnight on March 31, 2021.

Section 2-619. – Living Wage Requirements.

- (a) The following are requirements of each service contractor/subcontractor:
 - (1) A service contract or/subcontractor shall pay a living wage to each of its covered employees during the time they are providing the covered services.

(2) A copy of the living wage rate shall be posted by the service contractor/subcontractor in a prominent place where it can easily be seen by the covered employees and shall be supplied to any covered employee upon request.

(3) Each service contractor shall make all of its service subcontractors aware of the requirements of this division and shall include the contract provisions listed in the Sample Contract under the Living Wage paragraph in each of its service subcontracts to ensure compliance with this article. The city shall not be deemed a necessary or indispensable party in any litigation between the service contractor and a subcontractor.

(4) A service contractor/subcontractor shall not discharge, reduce the compensation of, or otherwise retaliate against any covered employee for filing a complaint, participating in any proceedings or otherwise asserting the requirement to pay a living wage under this division. A covered employee who claims their employer has not paid them a living wage as required by this division may file a written complaint with the city.

(5) Each service contractor/subcontractor shall produce payroll records, and any other requested documentation to the city as necessary for the city to audit or investigate compliance with or a reported violation of this division.

The adjusted Living Wage for this contract will be \$15.00 per hour (Living Wage with Health Benefits) or \$17.25 per hour if Health Benefits are not offered. The living wage for this contract will increase annually on the anniversary date of the contract at the City's prevailing living wage rate, which is updated October 1 each year.

7.5 TAXES, CHARGES AND FEES

The proposer agrees that any applicable Federal, State and Local sales and use taxes, which are to be paid by City of Gainesville, are included in the proposal. Since the City of Gainesville is often exempt from taxes for equipment, materials and services, it is the responsibility of the Proposer to determine whether sales taxes are applicable. The Proposer is liable for any applicable taxes which are not included in the proposal.

7.6 COSTS INCURRED BY PROPOSERS

All expenses involved with the preparation and submission of proposals to the City, or any work performed in connection therewith shall be borne by the proposer(s). No payment will be made for any responses received, nor for any other effort required of or made by the proposer(s) prior to commencement of work as defined by a contract approved by the City Commission (if so required).

7.7 RULES; REGULATIONS; LICENSING REQUIREMENT

The proposer shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Proposers are presumed to be familiar with all Federal, State and local laws, ordinances, codes and regulations that may in any way affect the services offered.

7.8 RECORDS/AUDIT

Contractor shall maintain records sufficient to document their completion of the scope of services established by this solicitation. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of five (5) years after completion of the Contract. Records which relate to any litigation, appeals or settlements of claims arising from performance under this Order shall be made available until a final disposition has been made of such litigation, appeals, or claims.

7.9 DEBARMENT, SUSPENSION, OTHERWISE EXCLUDED

By submitting a proposal, proposer agrees that it:

- Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- Has not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements or receiving stolen property;

- Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission or any of the offenses enumerated in paragraph (2) of this certification; and
- Has not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

7.10 PUBLIC ENTITY CRIME INFORMATION STATEMENT

Section 287.133 (2)(a), Florida Statutes, contains the following provisions: “A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or proposer under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.”

7.11 INVESTIGATION OF ALLEGED WRONGDOINGS, LITIGATION/ SETTLEMENTS/FINES/PENALTIES

The City Commission specifically requests that responders to this document indicate in writing any investigations of wrongdoings, litigation and/or settlements, and fines or penalties (anywhere in the U.S) involving the proposer and specific proposers listed as projected to provide services to the City. You may be required to respond to questions on this subject matter.

7.12 NON-DISCRIMINATION POLICY AND COMMERCIAL NON-DISCRIMINATION REQUIREMENT

As a condition of entering into this agreement, the company represents and warrants that it will comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination. The company shall not discriminate on the basis of race, color, religion, gender, national origin, marital status, sexual orientation, age, disability or gender identity, or other unlawful forms of discrimination in the solicitation, selection, hiring, commercial treatment of subcontractors, vendors, suppliers or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination.

The City reserves the right to investigate any claims of illegal discrimination by the Proposer and in the event a finding of discrimination is made and upon written notification thereof, the Proposer shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the City. The company understands and agrees that a violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

For more information on this policy and requirement, please visit the [Office of Equal Opportunity](#).

7.13 USE OF RFP REPLY IDEAS

The City has the right to use any or all information presented in any response to the RFP, whether amended or not, except as prohibited by law. Selection or rejection of the submittal does not affect this right.

7.14 E-VERIFY REQUIREMENT

Section 448.095, Florida Statute states the statute shall be construed in a manner so as to be fully consistent with any applicable federal laws or regulations. The Contractor shall (1) utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract; and (2) shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. Alternatively, Contractor shall provide proof that one of the exceptions to the E-Verify federal contractor rule applies.

7.15 INTERNATIONAL PROPOSER REQUIREMENTS

The City is unable to send ACH payments to international banks. Therefore, ACH payments will only be made to U.S.A. banks. Additionally, the international company must be from a country that has a tax treaty with the U.S.A. International proposers must agree to these requirements and provide proof of same should they receive an award recommendation.

7.16 PROHIBITION AGAINST CONSIDERATION OF SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING

In accordance with Section 287.05701(2)(a), F.S. (2023), the City may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor, and may not give preference to a vendor based on the vendor's social, political, or ideological interests.

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PART 8 – AGREEMENT

CONSTRUCTION MANAGER AGREEMENT

RECONSTRUCTION OF THE THELMA BOLTIN CENTER

THIS AGREEMENT entered into and effective this day _____ of _____, 20____, between, _____ (“CM”) and City of Gainesville, Florida, a Florida municipal corporation (“City”). Collectively, the City and CM are hereinafter referred to as the “Parties”.

WITNESSETH:

In consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

1. **TERM.** The Agreement is effective upon execution by both Parties and continue to the completion of the project identified in Exhibit 1 unless earlier terminated as provided herein.

2. **THE WORK, AUTHORIZATION FOR WORK AND PERFORMANCE OF WORK.** The CM shall furnish all labor, material, equipment, and services covered by all documents attached as exhibits and incorporated by reference in this Agreement, hereinafter collectively referred to as “Contract Documents”, which shall include all necessary work and all work incidental thereto (the “Work”). All Work shall be performed and completed in accordance with the Contract Documents. The Contract Documents are made part of this Agreement as set forth herein. Receipt of the Contract Documents are herein acknowledged by the CM.
 - 2.1. **Scope and General Conditions.** The Work may include and is limited to the projects of contained in **Exhibit 1**. The City’s performance and obligation to pay under this Agreement is contingent upon a specific project appropriation by the City Commission. The Parties hereto understand that this Agreement is not a commitment of future appropriations. The CM’s services may include pre-construction and/or construction services and will be initiated by City when City desires to procure such services from CM under this Agreement. When the City identifies a project to advance, the City will provide the CM with a detailed description of the project scope.
 - 2.2. **Preconstruction Services Work Order.** Preconstruction services shall be authorized and performed in accordance with a written and jointly executed Preconstruction Services Work Order. A sample

Preconstruction Services Work Order is included as **Exhibit 2**. The CM shall provide a preconstruction services proposal for services to be provided during the design development phase. The preconstruction services proposal shall include:

- 2.2.1. Scope of Services, with assumptions, clarifications and site specific requirements;
- 2.2.2. Fee Proposal;
- 2.2.3. Preconstruction Services Schedule;
- 2.2.4. List of Preconstruction Services Personnel; and
- 2.2.5. Any additional document required by the City or CM to support the proposal.

2.3. Construction Services Work Order.

2.3.1. Construction services shall be authorized and performed in accordance with a written and jointly executed Construction Services Guaranteed Maximum Price (GMP) Work Order. A sample Construction Services GMP Work Order is included as **Exhibit 3**. The CM shall provide a construction services GMP proposal for services to be provided during the construction phase. The construction services GMP proposal shall include:

- 2.3.1.1. A recital of the specific construction documents, including, drawings, specifications, and all addenda thereto, used in preparation of the proposal.
- 2.3.1.2. The elements of the GMP including:
 - 2.3.1.2.1. The cost of the Work, detailed by each subcontract, trade or bid division.
 - 2.3.1.2.2. The CM's Contingency for the Work.
 - 2.3.1.2.3. The CM's Staffing Cost, detailed by expense category.
 - 2.3.1.2.4. The General Conditions Cost, including bond and insurance costs, detailed by expense category; and
 - 2.3.1.2.5. The CM's overhead and Profit
- 2.3.1.3. Draft schedule of values;
- 2.3.1.4. A description of all includes to, or excluded from the GMP
- 2.3.1.5. All assumptions and clarifications; and
- 2.3.1.6. Construction schedule.

2.3.2. The CM acknowledges that the Construction Documents may be incomplete at the time Construction Service GMP Work Order issuance and that the Construction Documents may not be completed until after commencement of the Work. Nevertheless, the GMP shall include all cost for the Work required by the completed Construction Documents. Once the Construction Service GMP Work Order is issued, the CM shall not be entitled to a GMP increase if the Work required by the completed Construction Documents:

- 2.3.2.1. Is required by this Agreement;
- 2.3.2.2. Is reasonably inferable by the incomplete documents;
- 2.3.2.3. Is consistent with the City’s programmatic goals and objectives;
- 2.3.2.4. Is consistent with the City’s Design and Construction Standards and general industry standards for the Work;
- 2.3.2.5. Is not substantial enlargement of the scope of work; or
- 2.3.2.6. Substantially conforms to the nature, type, kind or quality of work depicted in the incomplete drawings.

2.3.3. The Parties may negotiate adjustments to the Work or/and GMP contained in the construction services GMP proposal. The CM’s submission of a construction services GMP proposal shall not obligate the City to issue a Work Order and the City, at its sole discretion and based upon its sole judgment may reject the proposal, terminate the project and/or proceed to construct the project using party or parties other than the CM.

2.4. **Personnel.** The Parties and the City’s hired architectural/engineering firm (architectural/engineering firm hereafter referred to as “Consultant”; City, CM and Consultant hereafter referred to as “Project Team”) will work collectively through completion of each Work Order. The CM shall provide leadership to the Project Team on all matters related to construction. The Consultant will provide leadership on all matter related to design. The CM will assign only qualified personnel to perform any services concerning this Agreement. At the time of execution of this Agreement, the Parties anticipate the following personnel will perform those functions indicated:

<u>NAME</u>	<u>FUNCTION</u>
<i>[List]</i>	<i>[List]</i>

So long as the individuals named above remain actively employed or able to be retained by the CM, they shall perform the functions indicated next to their names. The City Manager, Public Works Director or Project Manager may authorized changes to this list in writing.

2.5. **Schedule.** The schedule included in each Work Order shall serve as the framework for all subsequent development of all construction schedule for the Work. The CM shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the schedule, subject to delays in the schedule not the fault of CM or its subcontractors. Time is of the essence in the performance of this Agreement and each Work Order, and shall complete the Work within the time frames specified in each Work Order, or as extended by signed a signed Work Order Amendment or Change Order. The Parties acknowledge that performance of Pre-Construction Services, if required, may overlap performance of Construction Services, and categories of Work performed during Construction Services may be

performed in separate phases.

2.6. Liquidated Damages

- 2.6.1. Inasmuch as failure to Substantially Complete the Work or achieve Final Completion within the time fixed in a Construction Services Work Order will result in injury to the City, and as damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if the Work is not Substantially Completed or ready for Final Completion within the time provided in the Work Order, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Agreement, the Construction Manager shall pay to the City as liquidated damages for such delay, and not as a penalty, the amount set forth in the herein for each calendar day elapsing between the date fixed for Substantial Completion and the date such Substantial Completion is fully accomplished and the date fixed for Final Completion and the date Final Completion is fully accomplished. The parties agree that said liquidated damages are reasonable given existing circumstances, including, without limitation, the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical. Liquidated damages for failing to timely attain Substantial Completion and Final Completion are not additive and will not be imposed concurrently.
- 2.6.2. Substation Completion is defined as the stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose and a certificate of occupancy has been issued. Final Completion is defined as the stage of construction when the Work has been completed in accordance with the Work Order and the City has received all documents and items necessary for closeout of the Work.
- 2.6.3. The liquidated damages shall be payable in addition to any excess expenses or costs payable by the CM to the City under this Agreement, and shall not preclude the recovery of damages by the City under other provisions of this Agreement, and/or the Work Order, except claims related to CM's delays in Substantial Completion. City's right to receive liquidated damages shall in no manner affect the City's right to terminate the Agreement and/or a Work Order, as provided in this Agreement or the Work Order. The City's exercise of the right to terminate shall not release the CM from the obligation to pay said liquidated damages.
- 2.6.4. When the City reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the CM will fail to achieve Final Completion by the date of Final Completion, the City shall be entitled, but not required, to withhold from any amounts otherwise due the CM the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay. Upon Final Completion, City shall release Final Payment, less any liquidated damages.

2.6.5. The applicable liquidated damages amounts are established in the following schedule:

Original GMP Amount.....	Daily Charge Per Calendar Day
\$299,999 and under	\$980
\$300,000 but less than \$2,000,000	\$1,699
\$2,000,000 but less than \$5,000,000	\$2,650
\$5,000,000 but less than \$10,000,000	\$3,819
\$10,000,000 but less than \$20,000,000	\$4,687
\$20,000,000 but less than \$40,000,000	\$7,625
\$40,000,000 and over	\$10,467 plus 0.00005 of any amount over \$40 million (round to the nearest whole dollar)

2.7. Performance and Payment Bonds.

2.7.1. Within ten (10) business days after signature of Construction Services Work Order in excess of \$200,000 by the Parties, CM shall provide the City with Payment and Performance Bonds, in the forms prescribed as **Exhibits 4 & 5**, in the amount of 100% of the total sum of the Work Order, the costs of which are to be paid by the CM.

2.7.2. If the surety for any bond furnished by the CM is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the CM shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the minimum requirements noted above and City’s approval.

2.7.3. In accordance with §255.05(1)(a), Florida Statutes, the CM shall record a copy of the Performance and Payment Bonds in the Public Records of Alachua County, Florida, prior to performing any Work under this Agreement. The CM shall deliver a certified copy of the recorded Performance and Payment Bonds to the City at least five (5) days prior to performing any Work. The timely delivery of the certified copy of the recorded Performance and Payment Bonds is a condition precedent to City’s obligation to make any payments to the CM hereunder.

2.7.4. If at any time after the execution of this Agreement and the surety bonds required for its faithful performance and payment, the City shall deem the surety or sureties upon such bond to be unsatisfactory, or if, for any reason, such bond ceases to be adequate to cover the performance of the Work, the CM shall, at its own expense, within five (5) days after the receipt of notice from the City to do so, furnish an additional bond or bonds in such form and amount, and with surety or sureties as shall be satisfactory to the City. In such event, no further payment to the CM shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the Work shall be furnished in a manner and form satisfactory to the City.

2.8. Direct Purchase Program. The City may elect to implement a direct purchase program whereby it may

purchase materials and equipment included in any Subcontractor's bid for a portion of the Work directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment are referred to as "Direct Purchase Materials." If Owner elects to implement a direct purchase program, it shall so notify CM, and the terms of this paragraph shall govern, along with City policies on the subject in effect at the time CM commences a Construction Work Order. The CM shall obtain CM's risk insurance on the Direct Purchase Materials naming the City as the insured or an additional insured, provided City shall reimburse CM for the cost of such insurance as provided by this Agreement. CM shall be responsible for safeguarding all Direct Purchase Materials on the project sites on the City's behalf.

3. DUTIES OF THE CITY.

- 3.1. The City will provide the CM any and all information regarding the City's requirements for each Work Order.
- 3.2. The City will establish and update a budget for each Work Order, including the amount allocated for the construction phase, the City's other costs and reasonable contingencies related to these cost appropriations.
- 3.3. The City will provide an architectural and engineering consultant for the design phase of each project.
- 3.4. The City will provide timely reviews of deliverables to meet schedule requirements.
- 3.5. The City will be responsive to questions in a timely manner to meet schedule requirements.

4. CM's DUTIES, OBLIGATIONS, AND RESPONSIBILITIES.

- 4.1. **Generally.** The CM agrees to furnish its best skill and judgment and to cooperate with the Consultant, where applicable, in furthering the interests of the City. The CM agrees to furnish efficient business administration and superintendence and to use its best efforts to complete each Work Order in an expeditious and economical manner consistent with the interests of the City. The CM agrees to furnish construction services as set forth herein and required for completion of each Work Order on a GMP basis. CM represents that it is thoroughly familiar with and understands the requirements of the referenced project types listed in **Exhibit 1** and that it is experienced in the administration and construction of building projects of the types and scopes referenced in this Agreement. CM represents to City that it has all necessary construction education, skill, knowledge, and experience required for these projects and will maintain, at all times during the term of this Agreement, such personnel on its staff to provide the services contemplated hereby within the time periods required for each Work Order. In addition, CM represents that it has, and all of the subcontractors performing services under this Agreement will have, all applicable

licenses required by the State of Florida, and any other regulatory entity, to perform such services.

4.2. **Compliance with Laws.** The CM shall comply with all laws, ordinances, regulations and building code requirements applicable to the Work. The CM shall be familiar with all state and local laws, ordinances, code rules and regulations that may in any way affect the Work. Ignorance on the part of the CM will in no way relieve the CM of responsibility. The CM shall abide by and conduct its programs and provide its services in compliance with the provisions of the Civil Rights Act of 1866, Civil Rights Act of 1871, Equal Pay Act of 1963, Civil Rights Act of 1964, Age Discrimination and Employment Acts of 1967, Rehabilitation Act of 1973, 1990 Americans with Disabilities Act, 1991 Federal Civil Rights Act, 1992 Florida Civil Rights Act, and all other applicable ordinances, statutes, laws and amendments thereto.

4.3. **E-verify.** The CM shall (1) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CM during the term of the Agreement; and (2) shall expressly require any subcontractors performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. Alternatively, CM shall provide proof that one of the exceptions to the E-Verify federal contractor rule applies.

4.4. **Living Wage.** The definitions, terms and conditions of the City's living wage requirements set forth in Division 2 of Article IX of Chapter 2 of the City's Code of Ordinances shall apply to this Agreement. These requirements include that the CM:

- 4.4.1. Shall pay a living wage to each covered employee during the term of this Agreement, including any extension(s) to this Agreement;
- 4.4.2. Shall maintain records sufficient to demonstrate compliance with the living wage requirements;
- 4.4.3. Shall not discharge, reduce the compensation of, or otherwise retaliate against any covered employee for filing a complaint, participating in any proceedings or otherwise asserting the requirement to pay a living wage; and
- 4.4.4. Shall cooperate with any city audit or investigation concerning compliance with or a reported violation of the living wage requirements, including providing all requested documentation.

Failure to comply with the City's living wage requirements shall be a material breach of this Agreement, enforceable by the City through all rights and remedies at law and equity.

4.5. Apprentice and Disadvantage Worker Requirements. CM shall comply with the requirements of the Apprentice and Disadvantaged Workers as outlined in Article XI, Chapter 2 of the City's Code of Ordinances for Work Orders issued in excess of \$300,000 for construction or \$75,000 for electrical work. Reporting requirements therein shall be completed in accordance with Paragraph 29. Failure of the CM to comply with the ordinance may result in termination of the contract.

4.6. Use of Florida Timber and Other Forest Products. In accordance with Florida Statute 255.20 (3), the City specifies that lumber, timber, and other forest products used for this Agreement shall be produced and manufactured in the State of Florida if such products are available and their price, fitness, and quality are equal. This requirement does not apply to plywood specified for monolithic concrete forms or if the structural or service requirements for timber for a particular job cannot be supplied by native species.

4.7. Preparation/Sufficiency of Sites. The CM shall, visit and thoroughly inspect the Work Order sites and any structure(s) or other manmade features to be modified and become familiar with local conditions under which the a project will be constructed and operated; (ii) if applicable, familiarize itself with the survey, including the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on a Work Order; (iii) familiarize itself with the City's layout and design requirements, conceptual design objectives, and budget for the a Work Order; (iv) familiarize itself with pertinent Work Order dates, including the Work Order schedule, (v) review and analyze all Work Order geotechnical, Hazardous Substances, structural, chemical, electrical, mechanical, and construction materials tests, investigations and recommendations; and (vi) gather any other information necessary for a thorough understanding of the Work Order. If the Work Order involves modifications to any existing structure(s) or other man-made feature(s) on the project site, the CM shall also review all as-built and record drawings, plans and specifications of which CM has been informed by City about and thoroughly inspect the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by CM resulting from Construction Manager's failure to familiarize itself with the Project Site or pertinent documents shall be deemed waived.

4.8. General Services. The CM agrees to:

4.8.1. Provide all services required to professionally complete the Work in an expeditious and economical manner consistent with this Agreement and the best interests of the City.

4.8.2. Endeavor to develop, implement and maintain, in consultation with the City, Consultant, and Subcontractors, a spirit of cooperation, collegiality, and open communication among the

parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Work Order is deemed a success by all parties.

- 4.8.3. Perform its services in accordance with schedule requirements.
- 4.8.4. Work with City and Consultant to pursue the City's goal of obtaining Leadership in Energy and Environmental Design (LEED) certification or other similar type certification for a Work Order, at the level set forth in a Work Order.
- 4.8.5. Participate in, and cooperate with, design phase, construction phase, and post-occupancy commissioning, validation, and other quality assurance and quality control processes.
- 4.8.6. Complete the Work by the required dates for Substantial Completion and Final Completion. The CM shall submit and maintain schedules in accordance with this Agreement. The Construction Schedule shall complement, and shall not conflict with, the design schedule.
- 4.8.7. Comply with City's policies and project management guides.
- 4.8.8. The CM shall not be required to provide professional services which constitute the practice of architecture or engineering, unless provided in the Construction Documents and relating to those divisions of the Work for which it is appropriate for CM's subcontractors to engage or employ licensed engineers for design associated with the Work, such as trusses.
- 4.8.9. The CM shall not damage, endanger, compromise or destroy any part of the Project or the Site, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Should the CM damage, compromise or destroy any part of the Project or the Site, the CM shall be fully and exclusively responsible for and bear all costs associated therewith.
- 4.8.10. Bribes and Kick-Backs: The CM shall not by any means:
 - 4.8.10.1. Induce any person or entity employed in connection with this Agreement to give up any part of the compensation to which that person or entity is entitled;
 - 4.8.10.2. Offer nor accept any bribes or kick-backs in connection with the Agreement from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of goods and materials; or
 - 4.8.10.3. Without the express written permission of the City, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the CM has a direct or indirect proprietary or other pecuniary interest.

4.9. Pre-construction Services. For Pre-construction Work Orders, the CM shall provide the following:

- 4.9.1. The CM shall familiarize itself with the approved scope for the Work Order and actively and jointly participate with the City and Consultant in formation of the final design. The schedule and phasing of the design shall be set forth in the Work Order.
- 4.9.2. The Consultant is required, in accordance with schedule requirements, to provide design concepts, narratives, and drawings. At each phase of design, in keeping with the City's goals for the Work Order, the CM shall familiarize itself with these design documents and, in accordance with the Work Order, provide the City and Consultant with a report detailing construction issues and concerns relating to the design, with detail appropriate to the phase of design. Without limitation of the foregoing, each construction report shall:
 - 4.9.2.1. Include a CM's estimate of overall construction cost, with CM's contingency associated with the Work at no greater percentages than the percentages set forth in the Work Order, including a comparison of the estimate to City's budget for construction;
 - 4.9.2.2. Identify conceptual decisions necessary to prepare accurate cost reports with the fewest assumptions, qualifications and exclusions;
 - 4.9.2.3. Include an analysis and evaluation of jobsite management, site logistics, and schedule considerations;
 - 4.9.2.4. Include an analysis and evaluation of the constructability of the design concepts, narratives, or drawings;
 - 4.9.2.5. Include an analysis and evaluation of the design concepts, narratives, or drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction including, without limitation, unusual or custom materials, value analysis, identification of long-lead materials affecting the Construction Schedule, availability of labor, and other factors affecting construction and, in the report provided during the Construction Documents Phase, suggestions for alternatives for matters which may delay the construction schedule;
 - 4.9.2.6. Address problems, conflicts, defects or deficiencies in the design concepts and offer resolutions of same; and
 - 4.9.2.7. Identify any other issues which CM reasonably believes may have a negative impact on the Project schedule, budget or performance.
- 4.9.3. The CM and the Consultant shall jointly schedule and attend regular meetings with the City and evaluate the preliminary design drawings. The Consultant shall prepare and distribute minutes of these meetings, and the CM shall verify the accuracy and completeness of the minutes.
- 4.9.4. The CM shall develop a comprehensive jobsite management and logistics plan for the City's review.

This plan shall be submitted no later than the date set forth the Work Order.

- 4.9.5. The CM shall, in accordance with schedule requirements, assist the Consultant with the resolution of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the Construction Documents.
- 4.9.6. At each phase of design, the CM shall work with the Consultant and/or the City's cost consultant to reconcile, and make recommendations on, the differences between the estimates each has prepared at that phase of design. If the final estimates of the construction cost by the CM and the Consultant and/or the Owner's cost consultant differ materially, the CM and Consultant and/or the City's cost consultant shall meet promptly to reconcile the discrepancies between their estimates so as to permit submission to the City of a final estimate of Construction Cost on which both the Consultant and the Construction Manager agree.
- 4.9.7. If the City elects to phase and/or "fast track" portions of the construction of a project, multiple Construction Services GMP Work Orders may be required.
- 4.9.8. The CM understands and acknowledges the City's intent that each project will be completed within the budget set by City for the project. Accordingly, throughout the Pre-Construction Services phase, the CM shall keep City informed if it believes that the project may not be completed within City's budget, the reasons why it cannot be, and the CM's proposed solutions therefor.

4.10. **Construction Services.**

4.10.1. CM Self-Performing Trade Work: The CM may identify portions of the work to request City permission to self-perform. CM must submit a proposal for the self-performance of work in the same manner as all other trade contractors, but prior to the solicitation of the other trade contractors. The City will determine, in its sole discretion, whether the CM's proposal provides the best value for the City. CM shall perform approved self-performance work in accordance with the same terms and conditions as other trade contractors and shall be paid the lump sum stated in the CM's work proposal for such work.

4.10.2. Trade Contractor Selection Bidding and Negotiation

- 4.10.2.1. In accordance with Owner's policies on the subject in effect at the time CM commences construction, the CM shall prepare and assemble document packets for use in bidding subcontracts. Such packaging of the Work shall be broken down to maximize both competition and the involvement of local, small and diverse businesses.
- 4.10.2.2. The CM shall develop subcontractor and supplier interest, including local, small and diverse businesses, for each division of the Work. The CM shall pre-qualify proposed subcontractors using a pre-qualification process approved by the City, which shall include,

at a minimum, proof of licensure where applicable.

- 4.10.2.3. For trade packages with a value of less than \$5,000, the Construction Manager, may negotiate with trade contractors to perform such Work by whatever means it deems appropriate, in its reasonable discretion. For trade packages with a value between \$5,000 and \$49,999, the CM shall, where competition is available and feasible, obtain three (3) written quotes. For trade packages with a value between \$50,000 and larger, the CM shall implement a bidding process consistent with the City's policies. For trade packages with a value of \$200,000 or more, the CM shall be required to advertise the trade package in the newspaper or other form of notice as permitted by law, at least twenty one (21) calendar days prior to the published due date, and accept sealed written bids/proposals to meet State Statute requirements. All trade packages in excess of \$50,000 shall be procured in accordance herewith under a competitive process approved by the City. While a sealed bid or proposal process is generally desired and anticipated for such trade packages to ensure the CM is receiving the lowest price for such trade packages, there may be situations in which such process is not appropriate. Therefore, the CM may, with the approval of the City, utilize an alternative competitive process to procure trade contractors.
- 4.10.2.4. The Construction Manager shall use its best efforts to obtain bids which are less than the final Work Order GMP.
- 4.10.2.5. The CM shall conduct bid openings in the presence of the City. The CM shall provide the Owner with a copy of its preliminary bid tabulation and copies of all bids.
- 4.10.2.6. The CM shall, for each subcontract, trade or bid division:
 - 4.10.2.6.1. Determine the final bid amounts, having reviewed and clarified the scope of work in detail with bidders to determine which bids are the lowest bids and are complete but do not include duplicate scope items;
 - 4.10.2.6.2. Prepare and furnish to the City a final bid tabulation summary which includes by subcontract, trade and/or bid division, the applicable final estimate and the related final bid amount and the details of all scope clarifications for City's review and approval;
 - 4.10.2.6.3. If requested by City, provide a list of all potential Direct Purchase Materials;
 - 4.10.2.6.4. Identify to the City in writing the subcontractors to which the CM recommends award of subcontracts; and
 - 4.10.2.6.5. Award and enter into a subcontract between itself and each subcontractor which it has recommended in accordance with this Agreement unless otherwise notified by the

City.

- 4.10.3. Utilities. The CM shall be responsible to provide and pay for consumption of, and connections to, utilities required for temporary service and construction unless otherwise directed by the City.
- 4.10.4. Reporting. The CM shall provide a monthly report in searchable PDF format summarizing the progress of the Work Order to the City and Consultant, including information on the subcontractors' work, percentage of completion of the Work, current estimating, subcontract buyouts, updated monthly Critical Path Method scheduling and Work Order accounting reports, including projected time to completion and estimated cost to complete the Work, LEED status, digital progress photographs, project directory, logs for Requests for Information, submittals and shop drawings, Change Orders, cost change proposals, field directives, safety meetings, deficiencies, weather conditions and meeting minutes. Critical path method schedules and changes thereto must be approved by the City.
- 4.10.5. Energy Rebate Program. CM shall gather product data and other information as needed to assist City with its application for energy rebates based on the materials and products installed in the facility.
- 4.10.6. Warranties. CM warrants that the goods and services supplied to the Owner pursuant to this Contract shall at all times fully conform to the specifications set forth in the GMP and be of the highest quality.
- 4.10.7. Permits and Governmental Notices. The CM shall prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work, provided Owner shall pay all building permit and state fire marshal inspection fees directly and give all notices required governmental authorities relating to a Work Order.

5. COMPENSATION OF THE CM.

5.1. **Payment for Preconstruction Services.** The City agrees to pay the CM, and the CM shall accept as complete payment for performance of Pre-Construction Services, the fee set forth in the Preconstruction Services Work Order, payable pursuant to the schedule set forth thereon. Preconstruction Services fees shall not be subject to CM Fee, but should include costs and labor rates with overhead and profit included.

5.2. **Payment for Construction Services.**

5.2.1. Price Guarantees. Upon execution of Construction Services Work Order, the CM guarantees and certifies that:

5.2.1.1. The sum of (i) the actual Cost of the Work, (ii) CM's Contingency, (iii) CM's Staffing Costs,

- (iv) General Conditions Cost, (v) CM's Overhead and Profit, and (vi) bonds and insurance, shall not exceed the amount set forth in the agreed upon GMP contained in the Work Order.
- 5.2.1.2. The actual Cost of the Work, Construction Manager's Staffing Costs, General Conditions Cost and CM's Overhead and Profit shall not exceed the guaranteed maximum for each such category and that all costs or expenses that would cause any of these individual categories to exceed the guaranteed maximum for each such category in the agreed upon GMP shall be borne by the Construction Manager unless adjusted by Owner approved change order.
- 5.2.1.3. All actual unit costs supporting the GMP proposal are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished to the City in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to the CM shall be reduced if the City determines such amounts were originally included due to materially inaccurate, incomplete, or non-current factual unit costs
- 5.2.1.4. To the extent the accepted GMP includes contingency, use of contingency shall be approved by the Public Works Director, in writing, prior to expenditure by the CM.
- 5.2.2. Compensable Services. The City shall pay, and the CM shall accept, as full and complete payment for the Construction Services, only the sum of the following items, which shall not exceed the GMP:
- 5.2.2.1. The aggregate net cost directly paid by the CM to subcontractors pursuant to written subcontracts to perform the Work ("Costs of the Work"), not to exceed the guaranteed maximum set forth in the Construction Services Work Order;
- 5.2.2.2. The compensation for the Construction Manager's provision of management services (the "Construction Manager's Staffing Costs"), not to exceed the guaranteed maximum set forth in the Construction Services Work Order;
- 5.2.2.3. The aggregate net cost of the Construction Manager's General Conditions (the "General Conditions Cost"), not to exceed the guaranteed maximum set forth the Construction Services Work Order; and
- 5.2.2.4. Construction Manager's Overhead and Profit, not to exceed that listed in this Agreement or the fee negotiated in the Construction Services Work Order.
- 5.2.3. Construction Manager's Staffing Costs. Construction Manager's Staffing Costs include and are limited to actual expenditures or negotiated amounts for the following items as authorized in the Construction Service Work Order; costs shall not include overhead and profit.
- 5.2.3.1. The cost of its supervisory, technical, administrative and clerical personnel engaged in

- supervision and management of the Work Order;
- 5.2.3.2. The cost of periodic site visits for supervisory, inspection, oversight, or management of Work Order by specific “home office” personnel as agreed upon in the Work Order;
 - 5.2.3.3. Direct costs incurred in the Work with the exception of those specifically enumerated compensable as a General Conditions Cost or a Cost of the Work;
 - 5.2.3.4. Expenses for transportation, meals, and lodging of principals and employees, when traveling in connection with services and duties specifically related to a Work Order and when authorized in the Work Order. Rates for transportation, meals and lodging are as set forth by the City, in accordance with state law;
 - 5.2.3.5. Expenses incurred for relocation and temporary living allowances of personnel required for the Work, if authorized by the Work Order; and
 - 5.2.3.6. Any costs or expenses incurred by the CM, not included in the General Conditions Cost, for provision of management services necessary to complete the Work Order in an expeditious and economical manner consistent with this Agreement and the best interests of City.
 - 5.2.3.7. Labor Burden for each employee shall be established in each Work Order. Labor burden mean the actual cost of benefits and taxes the CM must pay or chooses to pay its employees and shall not include any profit, mark-up or expenses unrelated to employee compensation. The City may elect to not reimbursement the CM for benefits not offered in City Employee benefit options.
- 5.2.4. General Conditions Costs. General Conditions costs include and are limited to actual expenditures or negotiated amounts for the following items as authorized in the Work Order:
- 5.2.4.1. Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the CM at for the Work and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the CM. Cost for items previously used by the CM shall mean fair market value;
 - 5.2.4.2. Costs incurred to provide site safety;
 - 5.2.4.3. Costs of removal of debris from the site;
 - 5.2.4.4. Costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;
 - 5.2.4.5. That portion of insurance and bond premiums directly attributable to this Agreement.

- Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments;
- 5.2.4.6. Sales, use, or similar taxes imposed by a governmental authority and paid by the CM, and directly related to the Work;
 - 5.2.4.7. Fees and assessments for the building permit and for other permits, licenses and inspections for which the CM is required by this Agreement to pay, including deposits lost for causes other than CM's fault;
 - 5.2.4.8. Data processing costs directly related to the Work and as approved by Owner, in writing;
 - 5.2.4.9. The cost of obtaining and using all utility services required for the Work;
 - 5.2.4.10. The cost of crossing or protecting any public utility, if required, and as directed by the City;
 - 5.2.4.11. All reasonable costs and expenditures necessary for the operation of the Project Site office, such as stationary, supplies, furniture, fixtures, office equipment and field computer services provided that quantity and rates are subject to the Work Order;
 - 5.2.4.12. The cost of secure off-site storage space or facilities approved by the Work Order;
 - 5.2.4.13. Printing and reproduction of the Construction Documents;
 - 5.2.4.14. Rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools;
 - 5.2.4.15. Cost of surveys, measurements and layout work reasonably required for the execution of the Work or by the Construction Documents; and
 - 5.2.4.16. Other expenses or charges properly incurred and paid in the prosecution of the Work, authorized by the Work Order, but specifically excluding legal costs and expenses, including, without limitation, attorneys' fees and court costs associated with the Project.
- 5.2.5. Construction Manager's Overhead and Profit. The CM's Overhead and Profit is a fixed percentage of the (i) Guaranteed Maximum Cost of the Work, (ii) Construction Manager's Contingency, (iii) Guaranteed Maximum Construction Manager Staffing Costs, and (iv) Guaranteed Maximum General Conditions Cost (excluding bond and insurance costs), as agreed upon in the Work Order. Overhead and Profit covers the costs of all of Construction Manager's overhead and expenses related to the Work, including home or branch office employees or consultants not at the Project Site (except those staffing costs paid pursuant to Section 6.2.3) and general operating expenses of the CM's principal and branch offices related to the Work (non-field offices), such as telephone service and long-distance and zone telephone charges, postage, office supplies, expressage, and other similar expenses. CM's Overhead and Profit shall be a Not-to-Exceed fee of 6% unless otherwise negotiated in the Work Order.

5.2.6. Construction Manager's Contingency. The CM's contingency, established in the Work Order, may be utilized, with concurrence from the Public Works Director, in writing, for the reason stated within the section. If upon Substantial Completion of the Work, the remaining amount of contingency exceeds one-half of the amount of the initial post-buyout contingency, such excess shall be returned via change order to the City. At the conclusion of the Work Order all unused contingency shall be returned to owner by change order.

5.2.6.1. Reasonable schedule recovery;

5.2.6.2. Means, methods, and materials reasonably inferred from the Construction Documents;

5.2.6.3. Subcontractor non-performance or default;

5.2.6.4. Work not included in the Construction Documents which is necessary to cause the Work order to conform to applicable building codes but was not identified as missing during the review of Construction Documents (through no fault of the CM), but expressly excluding any legal costs and expenses, including, without limitation, attorney's fees and costs, associated with the Work Order;

5.2.6.5. Other costs incurred by the CM that are not Cost of the Work, General Conditions Cost or Construction Manager Staffing Costs, but expressly excluding any legal costs, attorney's fees, and expenses, associated with the Work Order; and

5.2.6.6. Costs and expenses incurred by the CM, not included in the General Conditions Cost, for provision of management services necessary to complete the Work Order in an expeditious and economical manner consistent with this Agreement and the best interests of City, but expressly excluding any legal costs, attorney's fees and expenses, associated with the Work Order.

5.2.7. Buyout savings and owner's contingency.

5.2.7.1. If CM receives bids for portions of the Work which are less than the amounts budgeted in the Work Order for such portions of the Work, such buyout savings shall first be utilized to offset shortfalls on other bid packages.

5.2.7.2. If, after offsetting any shortfalls, buyout savings remain, at the time provided in the Work Order for the award of subcontracts, all buyout savings shall be returned to the City via" change order or placed in Owner's contingency.

5.2.7.3. Owner's contingency may be included in the Work Order and used at the owner's discretion. This should be held separately without fee initially applied, until it is utilized and fee will be deducted at that time. Any remaining Owner's Contingency will be deducted from GMP upon completion of the Work Order.

5.2.8. Use of Buyout Savings/Sales Tax Savings. The net amount of buyout savings and savings from City's purchase of direct purchase materials may be utilized by the City for the following or other reasons:

- 5.2.8.1. Customer or designer-requested changes;
- 5.2.8.2. Additive bid alternates and deductive credits;
- 5.2.8.3. Design errors or omissions in the Construction Documents which were not detected by the CM through no fault of CM, including Work necessary to cause the Work Order to conform to applicable building codes;
- 5.2.8.4. Differing/unforeseen existing conditions, as permitted in this Agreement.

6. **NOTICES.** Except as otherwise provided in this Agreement, any notice of default or termination from either party to the other party must be in writing and sent by certified mail, return receipt requested, by personal delivery with receipt or by electronic mail to the email addresses below. Notices shall be deemed delivered two (2) business days after mailing, unless made by personal delivery in which case delivery shall be deemed to occur upon actual receipt by the other party or by electronic mail in which case delivery shall be deemed to occur upon sending the communication. For purposes of all notices, CM and City representatives and addresses are:

City:
City of Gainesville Parks Recreation & Cultural Affairs
Wild Spaces & Public Places
PO Box 490 MS 24
Gainesville, FL 32627-0490
Attn: Project Manager
McNiecePR@GainesvilleFL.gov

CM:
CM
Street Address
City, State ZIP
CM email.

7. **WAIVER OF CLAIMS AND CONTINUING OBLIGATIONS.**

7.1. It is agreed that when all Work for authorized by a Work Order has reached Final Completion and has been inspected and approved by the City, or the City's authorized representatives, the CM shall furnish to the City the CM's Final Affidavit in the form attached hereto as **Exhibit 6**, or other such release as provided for in §255.05, Florida Statutes, and agreed to by the City. Submission of the CM's invoice for final payment shall further constitute the CM's representation to the City that all obligations of the CM to others, including but not limited to its consultants, subcontractors, and suppliers, incurred in connection with the Work Order have been paid in full. CM shall include, with its invoice for final payment, executed and notarized Waivers of Right to Claim against the Payment Bond, in the form attached hereto as **Exhibit 7**, from all laborers, materialmen and subcontractors defined in §713.01, Florida Statutes, who furnished labor, services, or materials for the prosecution of the Work provided for in the applicable Work Order, unless the CM provides the City with a written consent from the surety regarding the Work Order or the payment in question.

7.2. The CM's obligations to perform the Work and complete the project in accordance with the Contract Documents shall be absolute. Neither approval of any progress, nor approval of any payment by the City, nor the issuance of a certificate of substantial completion, nor any use or occupancy of the project or any part thereof by the City, nor any act of acceptance by the City, nor any failure to do so, nor any correction of faulty or defective work by the City shall constitute an acceptance of Work not in accordance with the Contract Documents.

7.3. The making and acceptance of final payment shall constitute:

7.3.1 A waiver of all claims by the City against the CM, other than those arising from unsettled liens, from faulty or defective work appearing after final payment, or from failure to comply with the requirements of the Contract Documents or the terms of any special guarantees specified therein, and

7.3.2 A waiver of all claims by the CM against the City, other than those previously made in writing and still unsettled.

8. **INSURANCE.** Throughout the term of this Agreement, the CM shall provide insurance of the types and in the amounts set forth below. The CM shall also require any subcontractors to provide insurance as set forth below. A current copy of the CM Certificate of Insurance showing coverage of the types and in the amounts required is attached hereto as **Exhibit 8**. The CM shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection

with the performance of the Work hereunder by the CM/vendor, its agents, representatives, employees or subcontractors.

8.1. COMMERCIAL GENERAL LIABILITY. Coverage must be afforded under a per occurrence form policy for limits not less than \$1,000,000 General Aggregate, \$1,000,000 Products / Completed Operations Aggregate, \$1,000,000 Personal and Advertising Injury Liability, \$1,000,000 each Occurrence, \$50,000 Fire Damage Liability and \$5,000 Medical Expense.

8.2. AUTOMOBILE LIABILITY. Coverage must be afforded including coverage for all Owned vehicles, Hired and Non-Owned vehicles for Bodily Injury and Property Damage of not less than \$1,000,000 combined single limit each accident.

8.3. WORKERS COMPENSATION AND EMPLOYER'S LIABILITY. Coverage to apply for all employees at STATUTORY Limits in compliance with applicable state and federal laws; if any operations are to be undertaken on or about navigable waters, coverage must be included for the USA Longshoremen & Harbor Workers Act. Employer's Liability limits for not less than \$100,000 each accident; \$500,000 disease policy limit and \$100,000 disease each employee must be included.

8.4. BUILDER'S RISK / INSTALLATION FLOATERS

8.4.1 When this contract or agreement includes the construction of and/or the addition to a permanent structure or building; including the installation of machinery and/or equipment, the following insurance coverage must be afforded:

8.4.1.1 Coverage Form: Completed Value, All Risk in an amount equal to 100% of the value upon completion or value of equipment to be installed.

8.4.1.2 When applicable: Waiver of Occupancy Clause or Cessation of Insurance clause. Flood Insurance as available under the National Flood Insurance Program.

8.5. EMPLOYEE FIDELITY COVERAGE (only applicable to vendors whose employees handle funds):

Employee Dishonesty coverage must be afforded for not less than \$500,000 Blanket all employees ISO Form.

8.6. OTHER INSURANCE PROVISIONS. The policies are to contain, or be endorsed to contain, the

following provisions:

8.6.1 Commercial General Liability and Automobile Liability Coverages.

8.6.1.1 The City of Gainesville, Florida, a Municipal Corporation, its officials, employees and volunteers are to be covered as an Additional Insured as respects: Liability arising out of activities performed by or on behalf of the CM/Vendor; to include Products and/or Completed Operations of the CM/Vendor; Automobiles owned, leased, hired or borrowed by the CM.

8.6.1.2 The CM's insurance coverage shall be considered primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of CM/Vendor's insurance and shall be non- contributory.

8.6.2 **All Coverages.** The CM/Vendor shall provide a Certificate of Insurance to the City with a thirty (30)day notice of cancellation. The certificate shall indicate if cover is provided under a "claims made" or "peroccurrence" form. If any cover is provided under claims made from the certificate will show a retroactivedate, which should be the same date of the contract (original if contact is renewed) or prior.

8.7. CERTIFICATE HOLDER. City of Gainesville, Florida, a Municipal Corporation

9. INCORPORATIONS BY REFERENCE AND GOVERNING ORDER OF DOCUMENTS.

9.1. All documents listed below, if not contained herein, are hereby incorporated by reference in this Agreement. Incases of discrepancy, the governing order of the documents is as follows:

- 9.1.1 Change Orders and Work Order Amendments;
- 9.1.2 Work Orders;
- 9.1.3 Amendments;
- 9.1.4 This Agreement;
- 9.1.5 RFP Addendums;
- 9.1.6 RFP No. PRCA-240008-WB;
- 9.1.7 CM's Bid Submittal.

10. INDEMNIFICATION.

- 10.1. To the maximum extent permitted by Florida law, the CM shall indemnify and hold harmless the City, and their officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, caused by the negligence, recklessness, or intentional wrongful misconduct of the CM or anyone employed or utilized by the CM in the performance of this Agreement. CM agrees that indemnification of the City shall extend to any and all Work performed by the CM, its subcontractors, employees, agents, servants or assigns.
- 10.2. The CM obligation to indemnify under this Article will survive the expiration or earlier termination of this Agreement.
- 10.3. This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of the CM's insurance coverage, or by limitation on the amount or type of damages, compensation or benefits payable by or for the CM or any Subcontractor under workers' compensation acts, disability benefit acts or employee benefit acts.
- 10.4. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the City's sovereign immunity or the provisions or limits of liability of §768.28, Florida Statutes.

11. **PUBLIC RECORDS.**

11.1. **General Provisions:** Any document submitted to the City may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency per §119.011(12), Florida Statutes. Any document is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law. Florida has a very broad public records law and certain records of a contractor may be considered public records. Accordingly, by entering into an agreement with the City, CM must:

- 11.1.1 Keep and maintain public records required by the City to perform the service.
- 11.1.2 Upon requirement from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- 11.1.3 Ensure that public records that are exempt or confidential and exempt from public records

disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CM does not transfer the records to the City.

- 11.1.4 Upon completion of the Work, or in the event this Agreement is terminated, the CM, when acting on behalf of the City as provided under §119.011(2), Florida Statutes, shall transfer, at no cost, to the City all public records in possession of the CM or keep and maintain public records required by the City to perform the service. If the CM transfers all public records to the City upon completion or termination of the Agreement, it must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CM keeps and maintains public records upon the completion or termination of the Agreement all applicable requirements for retaining public records shall be met. All records stored electronically shall 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.

11.2 IF THE CM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT E-MAIL clerks@GainesvilleFL.gov PHONE (352-334-5015 OR PO BOX 490, STATION 19, GAINESVILLE, FL, 32627-0490

11.3 Confidential Information

- 11.3.1 During the term of this Agreement, the CM may claim that some or all of CM's information, including, but not limited to, software documentation, manuals, written methodologies and processes, pricing, discounts, or other considerations (hereafter collectively referred to as "Confidential Information"), is, or has been treated as confidential and proprietary by CM in accordance with §812.081, Florida Statutes, or other law, and is exempt from disclosure under the Public Record Act. CM shall clearly identify and mark Confidential Information as "Confidential Information" or "CI" and the City shall use reasonable efforts to maintain the confidentiality of the information properly identified by the CM as "Confidential Information" or "CI."
- 11.3.2 The City shall promptly notify the CM/Professional in writing of any request received by the City for disclosure of CM's Confidential Information and the CM may assert any exemption

from disclosure available under applicable law by seeking a protective order against disclosure from a court of competent jurisdiction. CM shall protect, defend, indemnify, and hold the City, its officers, employees and agents free and harmless from and against any claims or judgments arising out of a request for disclosure of Confidential Information. CM shall investigate, handle, respond to, and defend, using counsel chosen by the City, at CM's sole cost and expense, any such claim, even if any such claim is groundless, false, or fraudulent. CM shall pay for all costs and expenses related to such claim, including, but not limited to, payment of attorney fees, court costs, and expert witness fees and expenses. Upon completion of this Agreement, the provisions of this paragraph shall continue to survive. CM releases City from claims or damages related to disclosure by City.

- 11.4 **Compliance:** The CM may be subject to penalties under §119.10, Florida Statutes, if the CM fails to provide the public records to the City within a reasonable time.

12. STARTING THE WORK

- 12.1. Schedule. The construction schedule shall include all pertinent date and periods for timely completion of the Work.

12.1.1. Unless otherwise directed and approved by the Project Manager, the CM shall, within fourteen (14) calendar days of the Notice to Proceed, prepare a Critical Path Method schedule updated monthly with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion. When preparing the schedule CM shall consider and account for City's operational needs on the site and adjacent thereto, particularly with regard to utility interruptions and access restrictions.

12.1.2. The Construction Schedule shall depict all activities necessary for, or incidental to, performance of the Work, showing the logic (sequence, dependency), duration, and "float" of each activity, with the critical path highlighted and shall include (i) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (ii) any guideline and milestone dates required by the City; (iii) any applicable subcontractor and supplier schedules; (iv) coordination with the submittal schedule which allows sufficient time for review of documents and submittals; (v)

allowances for procurement, fabrication, and delivery of materials, especially "long lead" items; (vi) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; (vii) the time required for testing, inspections, and commissioning, if applicable; (viii) time for schedule constraints, such as holidays and events on City's property and adverse weather conditions which are normal and may be reasonably anticipated; and (ix) required decision dates.

12.1.3. By reviewing the Construction Schedule, the City and the Consultant do not assume any of the CM's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the City.

12.1.4. The CM shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The CM shall discuss the status of the Work biweekly with the Project Manager and/or Consultant, so that proper overall management may be provided.

12.1.5. The CM shall periodically and in all instances when the CM anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (i) states and explains any modifications of the critical path schedule, including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

12.2. Pre-Construction Conference

Before starting Work, a conference will be held to review the schedules and submittal package (See 12.5 Submittals), to establish procedures for handling Shop Drawings and other submissions, to establish procedures for processing applications for payment, and to establish a working understanding between the parties as to the project. Present at the conference will be the Project Manager, and/or authorized representatives, the CM, and the Consultant.

12.3. Notice to Proceed

Upon execution of a Work Order, the Project Manager will give the CM a written Notice to Proceed stating date by which the CM must start the Work; but such date shall not be more than forty-five (45) days after the date of execution of the Work Order. No work shall be done prior to receipt of the Notice to Proceed.

12.4. Commencement of Time

The Work Order Time shall commence on the date when the Work is actually started but no later than the date provided in the Notice to Proceed.

12.5. Submittals

The CM's submittal package for the Pre-Construction meeting shall include any requirements or permits and other submittal required by this Agreement or Work Order. All submittals must be accepted by the City prior to implementation.

13. **CONSTRUCTION DOCUMENTS; OWNERSHIP AND COPIES OF DOCUMENTS; RECORD DOCUMENTS**

13.1. All Specifications, Drawings and copies thereof furnished by the City shall remain the property of the City. They shall not be used on another project, and with the exception of those sets of Contract Documents which have been signed in connection with the execution of the Agreement, shall be returned to the City on request upon completion of the project.

13.2. The CM will keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to the Project Manager.

13.3. The CM acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Project Manager and the Consultant about any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and (ii) variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.

13.3.1. If the CM performs any Work which it knows or should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Project Manager and

Consultant and prior to receiving written authorization from the Project Manager to proceed, the CM shall be responsible for the consequences of such performance.

- 13.3.2. Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the CM and subcontractors shall verify all measurements at the Site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Project Manager and Consultant prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of Work or if the Project Manager and Consultant to receive written notice before the Work was performed.

14. **WORK BY OTHERS**

- 14.1. The City may perform additional work related to the project by itself, or may enter other contracts for work on the project. The CM shall afford the City and/or other contractors reasonable opportunity for the introduction and storage of materials and equipment and the execution of work and shall properly connect and coordinate the CM's work with theirs.
- 14.2. If any part of the CM's Work depends for proper execution or results upon the work of any such other contractor (or the City), the CM will inspect and promptly report to the Project Manager in writing any defects or deficiencies that render it unsuitable. The CM's failure to so report shall constitute an acceptance of the other work as to be fit and proper for the relationship of their Work, except as to defects and deficiencies which may appear in the other work after the execution of their Work.
- 14.3. The CM will do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. The CM will not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the Project Manager.
- 14.4. If the performance of additional work by other contractors or the City is not noted in the Contract Documents, written notice thereof shall be given to the CM prior to starting any such additional work. CM work schedules shall be adjusted to allow for any necessary utility adjustments identified prior to start of work. If the CM believes that the performance of such additional work by the City

or others causes the CM additional expense or entitles it to an extension of the Work Order Time, it may make a claim as provided in Paragraphs 24 to 26.

15. **RESPONSIBLE AGENT**

- 15.1. The CM shall designate and submit a responsible agent and alternate as necessary, for all dealings, communications, or notices or contracts between the City and the CM.
- 15.2. The Project Manager will be the responsible agent for the City. Any notice or communication to or from the responsible agent shall be deemed to be a communication to the CM.

16. **ACCIDENT PREVENTION**

- 16.1. Precaution shall be exercised at all times for the protection of employees, other persons and property.
- 16.2. CM's employees shall report to their superintendent any hazardous conditions or items in need of repair noted during the performance of work. Said superintendent shall thereupon notify the responsible agent of such conditions.
- 16.3. Safety shall be a prime concern of the CM at all times. The CM shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including Site safety and safety precautions and programs.

17. **SUBCONTRACTS**

- 17.1. The CM will not employ any Subcontractor (whether initially or as a substitute) against whom the City or the Project Manager may have reasonable objection, nor will the CM be required to employ any Subcontractor against whom he has reasonable objection. The CM will not make any substitution for any Subcontractor who has been accepted by the City and the Project Manager, prior to written concurrence by the Project Manager.
- 17.2. The CM will be fully responsible for all acts and omissions of its Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that the CM is responsible for the acts and omissions of persons directly employed by it. Nothing in the Agreement shall create any contractual relationship between any Subcontractor and the City or any obligation on the part of the City to pay or to see to the payment due any Subcontractor, except as may otherwise be required by law. The Project Manager may furnish to any Subcontractor,

to the extent practicable, evidence of amounts paid to the CM as compensation for specific Work performed.

17.3. The Specifications and Drawings shall not control the CM in dividing the Work among Subcontractors or delineating the Work to be performed by any trade.

17.4. The CM agrees to specifically bind every Subcontractor to all of the applicable terms and conditions of the Agreement. Every Subcontractor, by undertaking to perform any of the Work, will thereby be contractually bound to the CM by such terms and conditions.

18. **PHYSICAL AND SUBSURFACE CONDITIONS**

18.1. The Project Manager will, upon request, furnish to the CM copies of all available boundary surveys and subsurface tests.

18.2. The CM will promptly notify the Project Manager in writing of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents. The Project Manager will promptly investigate those conditions and determine if further surveys or subsurface tests are necessary. Promptly thereafter, the Project Manager will obtain the necessary additional surveys and tests and furnish copies to the CM. If the Project Manager finds that the results of such surveys or tests indicate subsurface or latent physical conditions differing significantly from those indicated in the Contract Documents, a Work Order Amendment shall be issued incorporating the necessary revisions.

19. **PROJECT MANAGER'S STATUS DURING CONSTRUCTION.**

19.1. The Project Manager acting directly or through duly authorized representatives (Inspectors and Consultants) shall be the City's representative during the construction period. All instructions of the City to the CM shall be issued through the Project Manager.

19.2. The Project Manager will make periodic visits to the site to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Project Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, nor will the Project Manager be responsible for

the construction means, methods, techniques, sequences, procedures or the safety precautions incident thereto. The Project Manager's efforts will be directed toward providing assurance for the City that the completed project will conform to the requirements of the Contract Documents, but Project Manager will not be responsible for the CM's failure to perform the Work in accordance with the Contract Documents. On the basis of the Project Manager's on-site observations as an experienced and qualified construction professional, the Project Manager will keep the City informed of the progress of the Work and will endeavor to guard the City against defects and deficiencies in the Work of the CM.

19.3. The Project Manager will have authority to disapprove of or reject Work which is defective; i.e., it is unsatisfactory, faulty or defective, does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in Paragraph 21. The Project Manager will also have authority to require special inspection or testing of the Work as provided in Paragraph 23.3, whether or not the Work is fabricated, installed or completed.

19.4. The Project Manager's review, inspection, or approval of any Work, Applications for Payment, or other submittals shall be solely for the purpose of determining whether the same are generally consistent with Work Order requirements. No review, inspection, or approval by Project Manager of such Work or documents shall relieve CM of its responsibility for the performance of its obligations under this Agreement or the accuracy, adequacy, fitness, suitability, or coordination of the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Document, or Construction Documents shall not relieve CM of responsibility for the performance of its obligations under this Agreement. Payment by City pursuant to the Agreement for Construction shall not constitute a waiver of any of City's rights under this Agreement or at law, and CM expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by City. Notwithstanding the foregoing, prompt written notice shall be given by the City to the CM if the City becomes aware of any fault or defect in the Work or non-conformance with this Agreement.

19.5. Neither the Project Manager's authority to act under Paragraph 19 nor any decision made by the Project Manager in good faith to exercise or not exercise such authority, shall give rise to any duty or responsibility of the City to the CM and Subcontractor, any of their agents or employees or any other person performing any of the Work.

20. **PROJECT MANAGER'S INTERPRETATIONS AND DECISIONS.**

- 20.1. The Project Manager will issue with reasonable promptness such written clarifications or interpretations (in the form of drawings or otherwise) as necessary for the proper execution of the Work. Such clarifications and interpretations are to be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the CM believes that a written clarification and interpretation entitles it to an increase in the Work Order Price, it may make a claim therefore as provided in Paragraph 25.
- 20.2. The Project Manager will be the initial interpreter of the terms and conditions of the Contract Documents and the judge of the performance thereunder. In this capacity, the Project Manager will exercise best efforts to insure faithful performance by both the City and the CM. The Project Manager will not show partiality to either and shall not be liable for the result of any interpretation or decision rendered in good faith. Claims, disputes and other matters relating to the execution and progress of the Work or the interpretation of or performance under the Contract Documents shall be referred initially to the Project Manager for decisions, which shall render in writing within a reasonable time.
- 20.3. The CM may appeal any written decision made by the Project Manager within fourteen (14) days in accordance with Paragraph 36.

21. **TESTS AND INSPECTIONS.**

- 21.1. The Construction Manager shall develop and implement a quality management program to ensure quality construction. Unless otherwise specified in the Work Order, the CM shall select the quality control and testing agencies, subject to Owner's written approval. If the Agreement, Construction Documents laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be inspected, tested or approved by someone other than the CM, the CM shall coordinate all test and inspection. The CM will furnish the Project Manager the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization as may be required by law or the Agreement. The cost of all such inspections, test and approvals shall be borne by the CM unless otherwise provided. If any such Work required so to be inspected, tested or approved is covered up without written approval or consent of the Project Manager, it must, if directed by the Project Manager, be uncovered for observation at the CM's expense.
- 21.2. Any Work which fails to meet the requirements of any such test, inspection or approval, and any Work

which meets the requirements of any such test or approval but does not meet the requirements of the Contract Documents, shall be considered defective. Such defective Work may be rejected, corrected or accepted as provided in Paragraph 28.

21.3. Neither observations by the Project Manager nor inspections, tests, or approvals by persons other than the CM shall relieve the CM from its obligations to perform the Work in accordance with the Agreement requirements of the Contract Documents.

22. CM'S SUPERVISION AND SUPERINTENDENCE.

22.1. The CM shall represent the City during construction, advise and confer with the City and the Consultant and provide administration of the Construction Documents. The CM shall supervise and direct the Work efficiently and with its best skill and attention. The CM shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Before undertaking the Work, the CM shall carefully study and compare the Contract Documents and check and verify all figures shown thereon and all field measurements. The CM will at once report in writing to the Project Manager any conflict, error or discrepancy which it may discover. The CM will be responsible to see that the finished Work complies accurately with the Contract Documents. The CM shall, at a minimum, staff each Construction Services Work Order with personnel who shall:

- 22.1.1. Supervise and coordinate the CM's personnel and act as its primary liaison with the City and the Consultant;
- 22.1.2. Coordinate trade contractors and suppliers, and supervise Work Order construction management services;
- 22.1.3. Be familiar with all trade divisions and trade contractors' scopes of work, all applicable building codes and standards, and this Agreement;
- 22.1.4. Check, review, coordinate and distribute shop drawings and check and review materials delivered for the Work Order, regularly review the Work to determine its compliance with the Construction Documents and this Agreement, and confer with the appropriate Consultants(s) as necessary to assure acceptable levels of quality;
- 22.1.5. Prepare and maintain Project records, including process documents and daily logs;
- 22.1.6. Schedule and conduct weekly progress meetings with subcontractors to review such matters as jobsite safety, job procedures, construction progress, schedule, shop drawing status and other information as necessary and provide notification of, and minutes from, such meetings to Owner and Professional;

- 22.1.7. Schedule and conduct weekly (or at an interval agreed upon) progress meetings with the City and Consultant to review such matters as construction progress, schedule, shop drawing status, and other information as necessary;
 - 22.1.8. Make provision for site security to protect the site and materials stored off-site against theft, vandalism, fire and accidents as required by this Agreement.
 - 22.1.9. Promptly reject any work which does not conform to the Construction Documents or which does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency of which it is aware, immediately notifying the Consultant and the City in writing when it has rejected any work;
 - 22.1.10. Comply with, and cause its subcontractors and suppliers to comply with, the Project Construction Schedule and applicable sub-schedules. The CM shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Work Order schedule, and enforce compliance with the all applicable schedules to insure timely completion of the Work. If at any time the Work Order is delayed, the CM shall immediately notify the Owner and the City of the probable cause(s) and possible alternatives and make recommendations to minimize expense and delay to the City; and
 - 22.1.11. Provide documentation necessary to the Consultant for, and otherwise assist the Consultant with, the preparation of the final “as-built” or record drawings unless provided by the City.
- 22.2. The CM shall maintain, at all times during its progress, a resident site manager satisfactory to the Project Manager. The site manager shall not be replaced without the consent of the Project Manager, except under extraordinary circumstances. The site manager will be the CM's representative at the site and shall have authority to act on behalf of the CM. All communications given to the site manager shall be as binding as if given to the CM and shall constitute notice under the applicable clauses of this Agreement.
- 22.3. The CM will provide competent, suitably qualified personnel and perform construction as required by the Contract Documents. If applicable to the Work Order, survey and layout work shall be performed under direction of a Florida Registered Land Surveyor. The surveyor is required to sign, seal and return a form provided by the City certifying the surveyor will be responsible for providing layout. The CM will at all times maintain good discipline and order among its employees at the site.
- 22.4. The City will not be responsible for the acts or omissions of the CM, any Subcontractors, any of their

agents or employees or any other persons performing any of the Work.

- 22.5. The CM shall have a responsible person or persons available on a 24-hour basis seven (7) days a week in order that contact can be made in emergencies and in cases where immediate action must be taken to maintain traffic or to overcome any other problem that might arise. The furnishing of a telephone number where such person or persons can be reached outside of normal working hours will constitute compliance with this provision.
- 22.6. The CM shall immediately notify the Project Manager and Consultant, both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.
- 22.7. The CM shall immediately notify the Project Manager and Consultant, both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances) of which it becomes aware. If the CM encounters environmental contamination (including but not limited to Hazardous Substances), the CM shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the Owner; and (v) take any other steps necessary to protect life and health. The term Hazardous Substances means all hazardous or toxic substances, materials, wastes, pollutants and contaminants which are listed, defined, or regulated under applicable laws, rules, regulations, codes, ordinances, orders and directives pertaining or regulated to health, safety or the environment, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act as amended, (42 U.S.C. § 9601 et seq), the Resource Conservation and Recovery Act as amended, (42 U.S.C. § 6901 et seq), the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251 to 1387), the Clean Air Act (42 U.S.C.A. §§ 7401 to 7671 q), the Emergency Planning and Community Right to Know Act (42 U.S.C.A. §§ 11001 to 11050), the Toxic Substances Control Act (15 U.S.C.A. §§ 2601 to 2692), the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901 to 6992k), the Oil Pollution Act (33 U.S.C.A. §§ 2701 to 2761) and all rules and regulations promulgated pursuant thereto. Without limiting the generality of the foregoing, "Hazardous Substances" shall specifically include polychlorinated biphenyl, asbestos (friable and non-friable), radon, urea formaldehyde, gasoline, diesel, oil, hydrocarbons, petroleum

derived constituents, biomedical waste, or hazardous or toxic residue.

23. **ACCESS TO SITE; ACCESS TO THE WORK; UNCOVERING FINISHED WORK; SITE SECURITY.**

23.1. The CM shall perform the Work so as not to interrupt any operations of the City on the Site.

23.1.1. The CM understands and acknowledges that the City may need access to or use of certain areas of the Site or Work prior to the CM's achievement of Substantial Completion, and that such occupancy, access or cause shall not constitute the City's acceptance of any Work.

23.1.2. The CM shall not enter any City-occupied area of the Site or Project unless first approved and scheduled by the Project Manager. The CM understands and acknowledges that the City may incur damages if the City's operations on the Site are interrupted or impaired as a result of the Work.

23.2. The Project Manager and their representatives and other representatives of the City will at all times have access to the Work. The CM will provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

23.3. If any Work is covered contrary to the request of the Project Manager, it must, if requested by the Project Manager, be uncovered for observation and replaced at the CM's expense.

23.4. If any Work has been covered which the Project Manager has not specifically requested to observe prior to its being covered, or if the Project Manager considers it necessary or advisable that covered Work be inspected or tested by others, the CM, at the Project Manager's request, will uncover, expose or otherwise make available for observation, inspection or testing, that portion of Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective or does not meet the requirements of the Contract Documents, the CM will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services. If, however, such Work is found to be non-defective and meets the requirements of the Contract Documents, the CM will be allowed an increase in the Work Order Price or extension of the Work Order Time directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if CM makes a claim therefore as provided in Paragraph 25 and 26.

- 23.5. If the Work is to be commissioned through the use of a commissioning consultant, the CM shall, through the Project Manager or the City's commissioning consultant, as the case may be, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work. The Construction Manager shall perform functional performance testing of items being commissioned under the supervision of the Owner's commissioning consultant, as directed by the Owner or Professional. Owner training and all commissioning activities, including functional performance test, shall be provided.
- 23.6. The CM shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work.

24. CHANGES IN THE CONTRACT WORK.

- 24.1. Without invalidating the Agreement, the City may, at any time or from time to time, order additions, deletions, or revisions in the Work. These will be authorized by Work Order or Work Order Amendment. Upon receipt of written authorization, the CM will proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any changes in the Work cause an increase or decrease in the Work Order Price, addition of Pay Items, or an extension or shortening of the Work Order Time, an equitable adjustment will be made as provided in Paragraphs 25 and 26 under a Change Order.
- 24.2. The Director or Project Manager may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Work Order or Work Order Amendment. If the CM believes that any minor change or alteration authorized by the Director or Project Manager entitles the CM to an increase in the Work Order Price or Work Order Time, it may make a claim as provided in Paragraphs 25 and 26.
- 24.3. Additional work performed by the CM prior to written authorization will not automatically entitle it to additional compensation, an increase in the Work Order Price, or an extension of the Work Order Time.
- 24.4. It is the CM's responsibility to notify its surety of any changes affecting the general scope of the Work or change in the Work Order Price, and the amount of the applicable Bonds shall be adjusted accordingly. The CM shall furnish proof of such adjustment to the City.

25. CHANGE OF WORK ORDER PRICE.

25.1. The Work Order Price or GPM constitutes the total compensation payable to the CM for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CM shall be at its expense without change in the Work Order Price or GPM.

25.2. The Work Order Price may only be changed by a Work Order Amendment or Change Order. If the CM is entitled by the Contract Documents to make a claim for an increase in the GMP, notice of intent to file a claim shall be delivered to the Project Manager in writing within ten (10) days of the occurrence of the event giving rise to the claim. The claim shall then be delivered to the Project Manager in writing within twenty (20) days after the conclusion of the event giving rise to the claim unless Project Manager allows additional period of time to ascertain accurate cost data. IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE WORK ORDER PRICE SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION. Work Order Amendments will be approved by the following procedure:

25.2.1 The City Manager, or designee, may approve Work Order Amendments or Change Orders that, either cumulatively or individually, increase the GMP within 10% of the original GMP.

25.2.2 The Public Works Director may approve Work Order Amendments or Change Order that authorizes the use of Buy-Out Savings, Sales Tax Savings, CM's Contingency or Owner's Contingency.

25.3. The value of any Work covered by a Work Order Amendment or any Change Order adjusted and paid in accordance with Paragraph 5.

25.4. Except for as provided in a Work Order Amendment or Change Order, no financial claim for delay to the project resulting from the Work Order Amendment or Change Order approval process will be allowed.

26. CHANGE OF THE WORK ORDER TIME.

- 26.1. Work Order Time changes shall be by a Work Order Amendment. If the CM is entitled by the Contract Documents to make a claim for an extension in the Work Order Time, notice of intent to file a claim shall be in writing delivered to the Project Manager within ten (10) days of the occurrence of the event giving rise to the claim. The claim shall then be delivered to the Project Manager in writing within fifteen (15) days after the conclusion of the event giving rise to the claim. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE WORK ORDER TIME SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.** The City Manager, or designee, may approve any extension in Work Order Time. Any change in the Work Order Time resulting from any such claim shall be incorporated in a Work Order Amendment.
- 26.2. The Work Order Time will be extended in an amount equal to time lost due to delays beyond the control of the CM, if it makes a claim therefore as provided in Paragraph 26.1. Such delays shall only include acts of neglect by any separate contractor employed by the City, fires, floods, labor disputes, epidemics, abnormal weather conditions, acts of God or other delays at the sole discretion of the City.
- 26.3. All time limits stated in the Contract Documents are of the essence in the Agreement. The provisions of Paragraph 26 shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.
- 26.4. Except as provided in a Work Order Amendment or Change Order, no financial claim for delay to the project resulting from the Work Order Amendment or Change Order approval process will be allowed.

27. **NEGLECTED WORK.**

- 27.1. If the CM should neglect to prosecute the Work in accordance with the Agreement, including any requirements of the progress schedule, after three (3) days written notice to the CM, the City may, without prejudice to any other remedy it may have, make good such deficiencies, and the cost thereof (including compensation for additional professional services) shall be charged against the CM. In this case a Work Order Amendment shall be issued incorporating the necessary revisions in the Work Order, including an appropriate reduction in the Work Order Price. If the payments then or thereafter due the CM are not sufficient to cover such amount, the CM will pay the difference to the City.

28. WARRANTY AND GUARANTEE; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.

28.1. The CM warrants and guarantees to the City that all materials and equipment will be new unless otherwise specified; that all Work will be of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents. All unsatisfactory Work, all faulty or defective Work and all Work not conforming to the requirements of the Contract Documents or of such inspections, tests or approvals shall be considered defective. The CM shall identify all defects or prompt notice of all defects shall be given to the CM. All defective Work, whether or not in place, may be rejected.

28.2. If required by written notice of the Director or the Project Manager prior to approval of final payment, the CM will promptly, without cost to the City, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Project Manager, remove it from the site and replace it with non-defective Work. If the CM does not correct such defective Work or remove and replace such rejected Work within a reasonable time, the City may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect cost of such correction or removal and replacement, including compensation for additional professional services, shall be paid by the CM, and an appropriate Work Order Amendment shall be issued deducting all such costs from the Work Order Price. The CM will also bear the expenses of making good all Work of others destroyed or damaged by the correction, removal or replacement of the CM's defective Work.

28.3. If, after the approval of final payment and prior to the expiration of one year after the date of substantial completion, or the date of acceptance the City, or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, the CM will promptly without cost to the City and in accordance with the City's written instructions either correct such defective Work, or, if it has been rejected by the City, remove it from the site and replace it with non-defective Work. If the CM does not promptly comply with the terms of such instructions, the City may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, will be paid by the CM.

28.3.1. The CM shall schedule, coordinate and participate in a walk-through inspection of the

Work one month prior to the expiration of the one-year correction period, and shall notify the Project Manager, the Consultant, and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

- 28.3.2. Should the CM fail to promptly correct any failure or defect, the City may take whatever actions it deems necessary to remedy the failure or defect and the CM shall promptly reimburse the City for any expenses or damages it incurs as a result of the CM's failure to correct the failure or defect.

29. APPLICATIONS FOR PROGRESS PAYMENTS.

- 29.1. If any portion of the GMP is determined by the application of unit prices, the number of units contained in the GMP is an estimate only, and the compensation to the CM shall be determined by the actual number of units incorporated in, or required by, the Work provided that in any event the GMP shall not be exceeded.
- 29.2. The CM shall prepare and present to the Project Manager and the Consultant the CM's schedule of values, apportioning the different elements of the Work for purposes of periodic and final payment. The CM's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Consultant or Project Manager. The CM shall not imbalance or artificially inflate any element of its schedule of values. Upon the Project Manager acceptance, the schedule of values shall be used to process and pay the CM's payment requests. The schedule of values shall not be changed without written approval authorized by the Project Manager.
- 29.3. The CM shall comply with the Trench Safety Act (Chapter 553, Part VI, Florida Statutes) which requires that CM delineate in their Schedules of Values the cost of compliance with applicable trench safety standards.
- 29.4. Not more than once a month, the CM will submit to the Project Manager for review the application for payment, covering the Work completed as of the date of the application. If payment is requested by the CM on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the request for payment shall also be accompanied by such supporting data, satisfactory to the Project Manager, as will establish 100% of invoice cost. Such payment to the CM shall not exceed seventy-five percent (75%) of the Unit Bid Price. Materials missing or damaged, for which partial or total payment has been made, shall be replaced by the CM at its expense.

29.5. The CM warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the project or not, will have passed to the City prior to making the application for payment, free and clear of all liens, claims, security interests and encumbrances (hereafter referred to as "liens"). The CM further warrants and guarantees that no Work, materials or equipment covered by an application for payment will have been acquired by the CM or by any other person performing the Work at the site or furnishing materials and equipment for the Project subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the CM or such other person. Non-payment of Subcontractors and suppliers will be referred to the CM's Surety for resolution.

29.6. Five percent (5%) of the amount earned through each progress payment will be withheld as retainage.

29.7. Each application for payment shall be incomplete and not authorized for payment unless accompanied by the following documents:

29.4.1 A certification of payment to Subcontractors on a form provided by the City that all Subcontractors having an interest in the Agreement were paid for satisfactory performance of their Agreements and that the retainage is returned to Subcontractors within 30 days after satisfactory completion of the Subcontractor's work.

29.4.2 A waiver of claims, on a form provided by the City, for any and all Subcontractors or materialmen that have furnished a notice of non-payment. The City will honor an exception to this clause when the CM demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the City and the affected Subcontractor.

29.4.3 If applicable, a report of Apprentice and Disadvantage Worker information for the CM and each Subcontractor that includes the following:

29.4.3.1. Total labor hours for the project;

29.4.3.2. Total labor hours performed by apprentice and disadvantaged workers;

29.4.3.3. The apprentice and/or disadvantage worker status for each such person; and

29.4.3.4. The name, address, work classification and hours worked each pay period for each

apprentice and disadvantage worker on the construction project.

29.8. The Project Manager will, within ten (10) days after CM concurrence of each application for payment, indicate in writing approval of payment, less any retainage as specified by the Agreement, and present the application to the City's Budget & Finance Department for payment. The City will pay the CM the amount approved by the Project Manager in accordance with Florida's Prompt Payment Act.

30. **APPROVAL OF PAYMENTS.**

30.1. The Project Manager's approval of any payment requested in an application for payment shall constitute a representation to the City, based on the Project Manager's on-site observations of the work in progress as an experienced and qualified construction professional and on its review of the application for payment and the supporting data, that the Work has progressed to the point indicated; to the best of its knowledge, information and belief, that the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the Contract Document and any qualifications stated in its approval); and that the CM is entitled to payment of the amount approved. However, by approving any such payment, the Project Manager shall not thereby be deemed to have represented that exhaustive or continuous on-site inspections were made to check the quality or the quantity of the Work; that the means, methods, techniques, sequences and procedures of construction were reviewed; or that any examinations were made to ascertain how or for what purpose the CM has used the monies paid or to be paid to it.

30.2. The Project Manager's approval of final payment shall constitute an additional representation to the City that the conditions precedent to the CM's being entitled to final payment, as set forth in Paragraph 31.3, have been fulfilled.

30.3. The Project Manager may refuse to approve the whole or any part of any payment if, in their opinion, the Project Manager is unable to make the foregoing representations to the City. The Project Manager may also refuse to approve any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, may nullify any such payment previously approved, to such extent as may be necessary in their opinion to protect the City from loss because:

30.3.1 The Work is defective.

30.3.2 Claims have been filed, or there is reasonable evidence indicating the probable filing thereof.

30.3.3 The Work Order Price has been reduced.

30.3.4 The City has been required to complete neglected Work in accordance with Paragraph 27.

30.3.5 The City has been required to correct defective Work or complete the Work in accordance with Paragraph 28.

30.3.6 Unsatisfactory prosecution of the Work, including failure to clean up as required by Paragraph 32.

31. **FINAL PAYMENT.**

31.1. Upon notification from the CM that the project is complete, the Project Manager will make a final inspection with the CM and will notify the CM in writing of any particulars in which this inspection reveals that the Work is incomplete or defective. The CM shall immediately make such corrections as are necessary to remedy such defects.

31.2. After the CM has completed any such corrections to the satisfaction of the Project Manager and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection and other documents, all as required by the Contract Documents, the CM may receive final payment pursuant to the procedure for progress payments. The final application for payment shall be accompanied by the CM's Final Apprentice & Disadvantage's Worker's Reporting (if applicable), CM's Final Payment Affidavit, Subcontractor/Materialman Waiver of Claims, and Final Payment Certification to Subcontractors, utilizing forms provided by the City. Nothing in this section waives the rights of the CM under Section 255.05(11), Florida Statutes. The Project Manager will execute a Certificate of Completion and recommend final payment.

31.3. If, on the basis of the Project Manager's observation and review of the Work during construction, their final inspection and review of the final application for payment, all as required by the Contract Documents, the Project Manager is satisfied that the Work has been completed and the CM has fulfilled

all of its obligations under the Contract Documents, the Project Manager will, within ten (10) days after CM's concurrence of the final application for payment, indicate in writing the Project Manager's approval of payment and present the application to the City Budget & Finance Department for payment. The City will pay the CM the amount approved by the Project Manager in accordance with Florida's Prompt Payment Act.

31.4. If after substantial completion of the Work, final completion thereof is materially delayed through no fault of the CM, and the Project Manager so confirms, the City shall, upon certification by the Project Manager, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CM to the Project Manager prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claim.

32. **CLEANING UP; PROJECT CLOSE OUT.**

32.1. The CM shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work, and, at the completion of the Work, it shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, construction equipment and machinery and surplus materials, leaving the site clean and ready for occupancy by the City. The CM shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

32.2. **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of: (i) the date that the Work or portion of the Work passes a Substantial Completion inspection, (ii) the date the required Substantial Completion documentation and items have been produced for the work or portion of the Work, or (iii) the date a certificate of occupancy is issued for the Work or portion of the Work.

32.2.1. When the CM believes that the Work is substantially complete, it shall notify the Project Manager and the Consultant that its Work is ready for a Substantial Completion inspection. The CM shall endeavor to give the Project Manager and the Consultant notice two (2) weeks prior to the predicted Substantial Completion inspection date.

32.2.2. The CM will coordinate with the Project Manager and the Consultant on an inspection date to determine whether the work is substantially complete.

- 32.2.3. At inspection(s) to determine whether the Work is substantially complete, the Project Manager will:
- 32.2.3.1. Inspect the Work;
 - 32.2.3.2. List additional items to be completed or corrected; and
 - 32.2.3.3. Determine whether Substantial Completion of the Work has occurred.
- 32.2.4. If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the City until the Work is determined to be substantially complete. CM will be responsible for costs of the Consultant associated with premature inspections.
- 32.2.5. On or prior to the required date of Substantial Completion, the CM shall deliver keys, permits, and other necessary and customary documents and items pre-requisite for the City's occupancy and use of the Work for its intended purpose. The Project Manager will obtain and review Substantial Completion documentation and items, and will inform the CM of any deficiencies.
- 32.2.6. When the Project Team agree that the Work has passed the Substantial Completion inspection and the CM has produced the required Substantial Completion documentation and items, they shall each sign the City's standard form Certificate of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Certificate of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction developed by the Project Manager within thirty (30) days thereof.
- 32.2.7. If the Work is commissioned through the services of a commissioning consultant, such commissioning shall be completed as a pre-requisite to the Work being declared Substantially Complete, provided CM shall not be responsible for delays in commissioning not the fault of CM.
- 32.2.8. The CM shall provide the City with operation and maintenance manuals and other operational documentation not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to allow adequate time for training prior to commissioning and the City's occupancy of the Project.
- 32.2.9. The CM shall meet with the City's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project. All training sessions shall be videotaped, with copies provided to the Project Manager.
- 32.2.10. The date of Substantial Completion shall fix the commencement date of warranties and guaranties and allocate between the City and the CM responsibility for security, utilities, damage to the Work

and insurance.

32.3. Final Completion. Final Completion of the Work shall be deemed to have occurred on the later of: (i) the date that the Work passes a Final Completion inspection or (ii) the date that the CM has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due the CM or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to the Project Manager by the CM.

32.3.1. When the CM believes the Work is finally complete, the CM shall notify the Project Manager and the Consultant that the Work is ready for Final Completion inspection.

32.3.2. The CM will coordinate with the Project Manager and the Consultant on an inspection date to determine whether the work is finally complete.

32.3.3. At the Final Completion inspection to determine whether the Work is finally complete, the Project Manager will:

32.3.3.1. Inspect the Work;

32.3.3.2. Determine whether all items on the list included with the Certificate of Substantial Completion have been satisfactorily completed and corrected;

32.3.3.3. Determine whether the Work complies with (a) the Agreement and Work Order; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;

32.3.3.4. Determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and

32.3.3.5. Determine whether the Work is finally complete.

32.3.4. If the Work is not finally complete, the CM shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the City, until the Work is finally complete.

32.3.5. On or prior to the date of Final Completion, the CM shall deliver to the Professional the following Final Completion close-out documentation and items:

32.3.5.1. Certificate of Final Completion - executed on City's standard form;

32.3.5.2. All operation and maintenance manuals not previously produced;

32.3.5.3. Owner maintenance or "attic" stock as prescribed in the Construction Documents;

32.3.5.4. One (1) set of as-built plans and specifications;

32.3.5.5. Certification and affidavit that all insurance required of the CM beyond final payment, if

- any, is in effect and will not be canceled or allowed to expire without notice to the City;
- 32.3.5.6. All written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
 - 32.3.5.7. Affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
 - 32.3.5.8. A list of any item(s) due but unable to be delivered and the reason for non-delivery;
 - 32.3.5.9. When requested, signed and sealed as built shall be submitted electronically to the owner in CADD as per the City's Engineering, Design and Construction Manual; and
 - 32.3.5.10. Any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

32.3.6. The Project Manager will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the CM, and will immediately inform the CM about any deficiencies and omissions.

33. CITY'S RIGHT TO STOP OR SUSPEND WORK.

33.1. If the Work is defective, if the CM fails to supply sufficient skilled workmen or suitable materials or equipment, if the CM fails to comply with the Contract Documents or Specifications, or if the CM fails to make prompt payments to Subcontractors for labor, materials or equipment, the City may order the CM to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The CM will be allowed no increase in Work Order Price or extension of the Work Order Time. The City may, at any time and without cause, suspend the Work, or any portion thereof, for a period of not more than ninety (90) days by notice in writing to the CM, and shall determine the date on which the Work will resume. The CM shall resume the work on the date so determined. The CM may be allowed an increase in the Work Order Price or an extension of the Work Order Time directly attributable to any suspension provided the CM makes a claim as provided in Paragraphs 25 and 26.

34. DEFAULT AND CITY'S RIGHT TO TERMINATE.

34.1. The failure of the CM to comply with any provision of this Agreement will place the CM in default. Prior to terminating the Agreement, the City will notify the CM in writing. This notification will make specific reference to the provision which gave rise to the default. The City will give the CM seven (7)

days to cure the default or develop a plan and time line acceptable to the City to cure the default. The Project Manager is authorized to provide written notice of default on behalf of the City, and if the default situation is not corrected within the allotted time, the Public Works Director is authorized to provide final termination notice on behalf of the City to the CM.

34.2. If the CM is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the CM or for any of its property, or if the CM files a petition to take advantage of any debtors' act, or to reorganize under the bankruptcy or similar laws, or repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or repeatedly fails to make prompt payments to Subcontractors or for labor, materials, or equipment, or disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or disregards the authority of the Director of Project Manager, or CM otherwise violates any provisions of the Contract Documents, then the City may, without prejudice to any other right or remedy and after giving the CM and its surety seven (7) days written notice, terminate the service of the CM and take possession of the project and of all materials related the Work and finish the Work by whatever method the City may deem expedient. In such case, the CM shall not be entitled to receive any further payment until the work is finished.

34.3. Upon thirty (30) days written notice to the CM, the City may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the Agreement. In such case, the CM shall be paid for all Work executed and any expense sustained plus a reasonable profit. The Public Works Director is authorized to provide written notice of termination on behalf of the City.

34.4. If funds to finance this Agreement become unavailable, the City may terminate the Agreement with no less than twenty-four (24) hours' notice in writing to the CM. The City will be the final authority as to the availability of funds. The City will pay the CM for all work completed prior to any notice of termination.

34.5. Where the CM's services have been terminated by the City, said termination shall not affect any rights of the City against the CM then existing or which may thereafter accrue. Any retention or payment of monies by the City due the CM will not release the CM from liability.

35. CM'S RIGHT TO STOP WORK OR TERMINATE.

35.1. If, through no act or fault of the CM, the Work is suspended for a period of more than ninety (90) days by the City or an order of court or other public authority, or if the Project Manager fails to act on any application for payment within thirty (30) days after it is submitted, or if the City fails to pay the CM any sum approved by the Project Manager within thirty (30) days of its approval and presentation, then the CM may, upon seven (7) days written notice to the City, terminate the Agreement and recover from the City payment for all Work executed in accordance with the Agreement plus fair and reasonable overhead and profit. In addition and in lieu of terminating the Agreement, if the Project Manager has failed to act on an application for payment or the City has failed to make payment as aforesaid, the CM may, upon seven (7) days' notice to the City and the Project Manager, stop Work until it has been paid all amounts then due.

36. **DISPUTE RESOLUTION.**

36.1. Initial Administrative Resolution: The CM may appeal to the Director within fourteen (14) days of a written decision made by the Project Manager. Failure of the CM to appeal any decision within this timeframe shall constitute the CM's acceptance of the Project Manager's decision and render any claims or disputes related to the decision waived. Such appeals to the Director shall detail the Contract Document provisions that conflict with the Project Manager's decision. The Director shall review each appeal and the Director and CM will seek to resolve the appeal through exchange of information and direct negotiations. The Director shall render its decision in writing within thirty (30) days of submission of the appeal; failure of the Director to render a decision within this timeframe shall render the appeal denied.

36.2. Secondary Administrative Resolution: The CM may appeal to the City Manager within fourteen (14) days of a written decision made by the Director. Failure of the CM to appeal any decision within this timeframe shall constitute the CM's acceptance of the Director's decision and render any claims or disputes related to the decision waived. Such appeals to the City Manager shall detail the Contract Document provisions that conflict with the Director's decision. The City Manager and CM will seek to resolve the appeal through exchange of information and direct negotiations. The City Manager shall render its decision in writing within forty-five (45) days of submission of the appeal; failure of the City Manager to render a decision within this timeframe shall render the appeal denied. The City Manager's decision shall be the final administrative decision and is a necessary condition precedent for exhaustion of administrative remedies in order to initiate mediation and a lawsuit based

on this Agreement.

36.3. Mediation: For any disputes which remain unsolved and have not been waived, within sixty (60) calendar days after Final Completion of the Work, the parties shall participate in mediation in Alachua County, Florida to address all unresolved disputes. If the CM wishes to contest any decision made by the City Manager, CM shall request mediation by providing written notice to the Project Manager within thirty (30) days of the City Manager's written decision. Such notice shall detail the Contract Document provision that conflict with the City Manager's decision. Failure of the CM to provide such notice shall constitute the CM's acceptance of the City Manager's decision and render any claims or disputes related to the decision waived. The Parties shall submit the dispute to mediation prior to filing, and as a condition precedent to, an action in court, which must be filed within thirty (30) days of conclusion of mediation, or the dispute shall be waived. The City shall provide the CM a list of three mediators and the CM shall select a mediator from the list. The Parties shall each pay one-half of the mediator's fees and costs. Should any dispute not be resolved in mediation, the parties retain all their legal rights and remedies under applicable law, to extent not waived in accordance with this Agreement.

37. **WORKPLACE VIOLENCE.**

37.1. Employees of the CM are prohibited from committing any act of workplace violence and shall remove anyone from the site in violations. Violations may be grounds for termination of the Agreement.

Workplace violence means the commission of any of the following acts by a CM's employee:

37.1.1 Battery: intentional offensive touching or application of force or violence to another.

37.1.2 Stalking: willfully, maliciously and repeatedly following or harassing another person.

37.1.3 Harassment: unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history)

38. **DUTIES AND OBLIGATIONS.** The rights and remedies available hereunder, and in particular without limitation, the warranties, guarantees and obligations imposed upon the CM by this Agreement and the rights and remedies available to the City thereunder, shall be in addition to and not a limitation of any otherwise imposed or available by law, special guarantee, or other provisions of this Agreement.

39. **POLLUTION ABATEMENT.** The CM shall comply with all federal, state and local laws and regulations controlling pollution of the environment. The CM shall take necessary precautions to prevent pollution of

soils, creeks, streams, lakes, wetlands and ponds with fuels, oils, bitumens, chemicals and other harmful materials and shall take necessary measures to minimize soil erosion.

40. **INJURY OR DAMAGE TO PEOPLE OR PROPERTY.** Should the City or the CM suffer injury or damage to its person or property because of any error, omission or act of the other or of any of their employees or agents or others for whose acts they are legally liable, claims shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.
41. **HEALTH CONSIDERATIONS.** The CM shall provide and maintain, in a neat and sanitary condition, such accommodations for the use of its employees as are necessary to comply with the requirements and regulations of the State and Local Boards of Health. The CM shall commit no public nuisance.
42. **SEVERABILITY.** It is understood and agreed by the Parties that if any provision of the Agreement shall contravene, or be invalid under the laws of the State of Florida, such contravention or invalidity shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the Parties shall be construed and enforced accordingly.
43. **AMENDMENT.** This Agreement may be amended only by written amendment, work order or work order amendment.
44. **INDEPENDENT CONTRACTOR.** In the performance of this Agreement, the CM will be acting in the capacity of an independent contractor, and not as an agent, employee, partner, joint venture, or associate of the City. The CM shall be solely responsible for the means, methods and techniques, sequences and procedures utilized by the CM in the full performance of this Agreement. Neither CM nor anyone employed by CM shall represent, act, purport to act, or to be deemed to be the agent, representative, employee or servant of the City.
45. **GOVERNING LAW AND VENUE.** The laws of the State of Florida, notwithstanding its conflict of laws or provisions, shall govern this Agreement. Sole and exclusive venue for all actions arising under this Agreement shall be in Alachua County.
46. **COMPLETE AGREEMENT.** This Agreement contains the sole and entire agreement between the City and the CM and supersedes any other written or oral agreements between them not incorporated herein.
47. **NON WAIVER.** The failure of any party to exercise any right in this Agreement will not waive such right in the event of any further default or non-compliance.
48. **SUCCESSORS AND ASSIGNS.** The CM shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the City. Subject to the provisions of the preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

49. **NO THIRD PARTY BENEFICIARIES.** Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed for the uses and purposes therein expressed on the day and year first above-written.

CONSTRUCTION MANAGER

CITY OF GAINESVILLE, FLORIDA

Print Name: _____

_____, City Manager

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY

City Attorney

EXHIBIT 1: SCOPE AND GENERAL CONDITIONS

The services are for a Construction Manager at Risk Entity (CM) for the reconstruction of the historic Thelma Boltin Center for the City of Gainesville.

1.0 Scope

1.1 Construction Manager Services

Provide a professional and construction team capable of providing the following services for the plan review and construction of a new Thelma Boltin Center.

- 1.1.0 Description: The work under this Agreement is generally described as construction of the facility listed below. The scope will also include all site work required by State or local review agencies. Specifically:

The City of Gainesville is seeking a qualified Construction Management firm to participate in the reconstruction and partial restoration of the Thelma A. Boltin Center located at 516 NE 2nd Avenue in Gainesville, FL. The City is seeking a qualified CM firm to participate in both in pre-construction services, reviewing construction drawings for constructability, as well as managing the construction effort.

The 8,216 square foot structure was built in 1942 to entertain service members during World War II. The structure consists of a large auditorium with an asphalt shingle, gable roof and an attached accessory wing with a flat roof.

The west and south facing walls of the auditorium will remain. The entirety of the remaining structure will be demolished and rebuilt.

Wannemacher Johnson Architects, Inc., out of St. Petersburg, will be designing the new building after almost two years of meetings with focus groups, community members, and City Staff. Their design will increase the size of the facility to approximately 12,000 square feet to create more useful programming space. The primary feature will still be a large auditorium and stage with dedicated space for support functions. Preliminary estimates put the total cost of this job at \$5.6 Million.

This project is challenging since it is a historic building in a historic neighborhood and will be subject to a great deal of public scrutiny. Familiarity with this type of renovation/construction is required. The Historic Preservation Board and Gainesville City Commission have directed us to keep the two most prominent auditorium walls which, unfortunately, are on the verge of collapse. The failing roof trusses have pushed the west wall out of plumb and we suspect the existing block walls are unlikely to have any filled cells or reinforcing bars. It's also possible that the existing footings are undersized.

Managing to preserve those two walls may require that the work proceed in multiple stages.

Also note that the windows in the two walls that are to remain must be professionally restored per the direction of the Historic Preservation Board. This will leave open fenestrations for several months.

Wannemacher Johnson Architects intends to start finalizing their design in July 2023 and deliver a complete set of construction documents by the end of the year. Wild

Spaces & Public Places sales tax money will be used to fund this project at the direction of the City Commission.

1.1.1 **Delivery:** The construction delivery method for this Agreement is Construction Manager at Risk (CMAR), which consists of both a preconstruction phase and a construction phase with separate task assignments for each phase. During the preconstruction phase, the CM will assist the City in collaborating with the City's hired Architects/Engineers (Consultant) on the design, constructability, cost and construction schedule, ultimately developing a Guaranteed Maximum Price (GMP) proposal to construct the facility. Upon the City's acceptance of the GMP, the City may elect to issue a Work Order to the CM for the construction phase. If the City and the CM do not agree upon a GMP, the City will not issue a Work Order for the construction phase to the CM. During the pre-construction and construction phase, the CM shall make recommendations to save money for the construction process and for on-going maintenance. The CM shall work closely with the City and its hired Consultant to bring the best value and quality to the project, as defined by the City. The CM will be required to assist in development various aspect of the budget and cost estimating for the project. The CM shall recommend the most beneficial and appropriate method to procure the trade contractors required to construct the facility, consistent with applicable state statutes. Recommendations for trade contractor participation may include self-performance, design-assist, design-build, competitive bids on complete construction documents, or a combination of methods. Once the City approves the recommended procurement methodology, the CM shall prepare the necessary bid packages and procure the trade contractors. CM shall structure trade contractor bid proposals to allow for independent design phase participation and subsequent construction phase participation if the construction phase is awarded to the CM. Although the City anticipates construction of each location in one phase, the City may benefit if the construction is divided into phasing components in addition to any phasing indicated in this Agreement. Examples of possible phasing components are: demolition, hazardous material abatement, relocation of underground utilities, site preparation, separated buildings, interior finishes of shelled space, parking lots, and landscape. Phasing components shall be identified during the pre-construction phase by the CM and proposed by the CM to the City by location. The City's goal in reviewing with the phasing with CM is to minimize costs and/or expedite the completion of the project.

1.2.0 Re-use of Existing Plans. In accordance with 287.055 Florida Statutes, any and all plans developed under this solicitation may be reused in subsequent task assignments if technically feasible. Professional fees shall be negotiated based on the level of effort require to update plan for reuse on different sites under this solicitation.

Exhibit 2: Pre-Construction Services Work Order Form

Pursuant to the Agreement for Construction Management for the reconstruction of the historic Thelma Boltin Center dated _____ [and amendments:___] (“CM Agreement”), between the City of Gainesville, Florida (“City”) and _____ (“CM”), the City and the CM hereby execute this Preconstruction Services Work Order (“Precon WO”) for

[Project Name

Project description

Location]

and further agree as set forth below.

1. This Precon WO shall become effective upon execution and shall continue in effect until all work has been completed, unless terminated in accordance with the CM Agreement.
2. Contract Documents. The Construction Manager shall perform the Work in accordance with this Precon WO, including the attachments and/or documents listed below, whether attached hereto or incorporated by reference, and the CM Agreement.

Attachment List (Attachments 1-4 must be included)

1. Preconstruction Scope of Services
2. Preconstruction Services Fee Proposal
3. Preconstruction Services Schedule
4. Preconstruction Services Personnel
5. Other Documents provided by the Owner to support the proposal
6. Other Documents provided by the Construction Manager to support the proposal

In the event of conflict between Contract Documents, the order of precedence shall be as provided in the CM Agreement. The order of precedence *within* this Precon Agreement shall be as listed above.

3. Time is of the essence, and Construction Manager shall meet the schedule provided with this Precon WO and work cooperatively with the Owner and Consultants. CM shall provide responses and deliverables within _____ days of receiving the information and request.

4. The Preconstruction Services Proposal price is _____ Dollars and ____ Cents (\$_____.__), in accordance with the price breakdown in Attachment 2. Preconstruction services shall be provided at a billable rate without fee included.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Work Order for the purposes stated herein.

CONSTRUCTION MANAGER:

By: _____
Signature

Print Name and Title

Date: _____

CITY

By: _____
_____, City Manager

Date: _____

APPROVED AS TO FORM AND LEGALITY

City Attorney

EXHIBIT 3: Construction Services Work Order Form

Pursuant to the Agreement for Construction Management for the reconstruction of the historic Thelma Boltin Center dated _____ [and amendments:___] (“CM Agreement”), between the City of Gainesville, Florida (“City”) and _____ (“CM”), the City and the CM hereby execute this Construction Services Work Order (“Construction WO”) for

**[Project Name
Project description
Location]**

and further agree as set forth below.

1. This Construction WO shall become effective upon execution and shall continue in effect until all work has been completed, unless terminated in accordance with the CM Agreement.
2. Contract Documents. The Construction Manager shall perform the Work in accordance with this Construction WO, including the attachments and/or documents listed below, whether attached hereto or incorporated by reference, and the CM Agreement.

Attachment List (Attachments 1-4 must be included)

1. GMP Detailed Cost Breakdown
2. GMP Project Schedule
3. Project Specific Requirements, Assumptions, and Clarifications
4. CM Personnel list (including roles and contact info)
6. Other Documents provided by the Construction Manager to support the proposal
Other Documents provided by the Owner to support the proposal

In the event of conflict between contract documents, the order of precedence shall be as provided in the CM Agreement. The order of precedence *within* this Construction WO shall be as listed above.

3. Additional project requirements and provisions are attached and incorporated as Attachment 3.
4. Construction Manager’s personnel for the Project shall be as listed in Attachment 4, hereby incorporated.
5. Time is of the essence, and Construction Manager shall commence the Work within ten (10) calendar days after issuance of the Notice to Proceed. Substantial Completion for the Project shall be within _____ days of issuance of the Notice to Proceed. The date of Final Completion for the Project shall be within _____ days after the deadline for Substantial Completion. The detailed schedule is attached and incorporated as Attachment 2.
6. Construction Manager’s Contingency shall be no greater, as a percentage of the estimated Cost of the Work, than the following at each of the following phases:
 - (10 %) at (30 %) Construction Documents
 - (5 %) at (60 %) Construction Documents
 - (5 %) at the time the GMP proposal is submitted (trade package bids secured)
 - (2%) at the time the GMP proposal is submitted (with trade package bids secured)

7. The Guaranteed Maximum Price is _____ Dollars and ____ Cents (\$_____.), as shown below.

Summary of Costs	GMP
Cost of the Work	\$
General Conditions	\$
Staffing	\$
Bonds and Insurance	
CM Contingency (per 6. Above)	\$
CM Fee % (__%
CM Fee / OH&P	\$
GMP Total:	\$

8. The CM shall award Trade Contracts within ninety (90) days of issuance of the Construction WO.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Work Order for the purposes stated herein.

CONSTRUCTION MANAGER:

By: _____
Signature

Print Name and Title

Date: _____

CITY

By: _____
_____, City Manager

Date: _____

APPROVED AS TO FORM AND LEGALITY

City Attorney

EXHIBIT 4: PAYMENT BOND FORM

CONTRACTOR (PRINCIPAL)

COMPANY (LEGAL NAME):

PRINCIPAL BUSINESS ADDRESS (No PO Box):

TELEPHONE NUMBER:

SURETY

COMPANY (LEGAL NAME):

PRINCIPAL BUSINESS ADDRESS (No PO Box):

TELEPHONE NUMBER:

OWNER (OBLIGEE)

NAME: City of Gainesville, Florida, Municipal Corporation

PRINCIPAL BUSINESS ADDRESS: 200 E University Avenue, Gainesville, Florida 32601

TELEPHONE NUMBER: 352-334-5000

CONTRACT DETAILS

CONTRACT NO.:

DATE EXECUTED:

AMOUNT:

GENERAL DESCRIPTION:

STREET ADDRESS OF PROJECT:

PO NO., RFP, OR BID NO.:

BOND

BOND NUMBER:

DATE:

AMOUNT:

KNOW ALL MEN BY THESE PRESENTS:

That Principal, hereinafter called Contractor, and Surety, as identified above, are bound to City of Gainesville, Florida, as Obligee, and hereinafter called the City, in the amount identified above, for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

This payment bond is executed pursuant to §255.05, Florida Statutes, and claimants must comply with the notice and time limitations of §255.05(2) and §255.05(10), Florida Statutes.

WHEREAS, Contractor has by written Contract entered into a Contract, identified above, with the City, which Contract Documents are by reference made part hereof, and for the purposes of this Bond are hereafter referred to as the "Contract."

THE CONDITION OF THIS BOND is that if Contractor promptly makes payments to all persons defined in §713.01, Florida Statutes, who furnish labor, materials and supplies used directly or indirectly by Contractor in the performance of the Contract; then CONTRACTOR'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT.

The surety hereby waives notice of and agrees that any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect surety's obligation under this bond.

The provisions of this bond are subject to the notice and time limitations of §255.05(2) and §255.05(10). In no event will the Surety be liable in the aggregate to claimants for more than the penal sum of this Payment Bond, regardless of the number of suits that may be filed by claimants.

SIGNATURES NEXT PAGE

Signed and sealed this _____ day of _____, 20_____.

CONTRACTOR (PRINCIPAL)

Signed, sealed and delivered
in the presence of:

By: _____

Witnesses as to Contractor

Name: _____

Title: _____

STATE OF _____

CITY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ___ day of _____, 20___, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced _____ as identification.

Notary Public (Signature) : _____

Printed Name: _____

My Commission Expires: _____ (AFFIX NOTARY SEAL)

SURETY

SIGNATURE: _____

SEAL

PRINTED NAME AND TITLE: ATTORNEY IN FACT

EXHIBIT 5: PERFORMANCE BOND FORM

CONTRACTOR (PRINCIPAL)

COMPANY (LEGAL NAME):

PRINCIPAL BUSINESS ADDRESS (No PO Box):

TELEPHONE NUMBER:

SURETY

COMPANY (LEGAL NAME):

PRINCIPAL BUSINESS ADDRESS (No PO Box):

TELEPHONE NUMBER:

OWNER (OBLIGEE)

NAME: City of Gainesville, Florida, Municipal Corporation

PRINCIPAL BUSINESS ADDRESS: 200 E University Avenue, Gainesville, Florida 32601

TELEPHONE NUMBER: 352-334-5000

CONTRACT DETAILS

CONTRACT NO.:

DATE EXECUTED:

AMOUNT:

GENERAL DESCRIPTION:

STREET ADDRESS OF PROJECT:

PO NO., RFP, OR BID NO.:

BOND

BOND NUMBER:

DATE:

AMOUNT:

KNOW ALL MEN BY THESE PRESENTS:

That Principal, hereinafter called Contractor, and Surety, as identified above, are bound to City of Gainesville, Florida, as Obligee, and hereinafter called the City, in the amount identified above, for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written Contract entered into a Contract, identified above, with City, which Contract Documents are by reference made a part hereof, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

1. performs the Contract between Contractor and City, at the times and in the manner prescribed in the Contract; and
2. pays City all losses, damages, including liquidated damages and damages caused by delay, expenses, costs and attorney's fees including appellate proceedings, that City sustains as a result of default by Contractor under the Contract; and
3. performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.

Whenever Contractor shall be, and is declared by City to be, in default under the Contract, and City having performed City's obligations there under, the Surety may promptly remedy the default, or shall promptly:

1. complete the Contract in accordance with its terms and conditions; or
2. obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if City elects, upon determination by City and Surety jointly of the lowest responsible bidder, arrange for a Contract between such Bidder and City, and make available as work progresses sufficient funds, paid to City, to pay the cost of completion and other costs and damages for which the Surety may be liable hereunder.

No right of action shall accrue on this bond to or for the use of any person of corporation other than City named herein.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other Work to be performed hereunder, or the specifications referred to therein shall in any way affect its obligations under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to Work or to the specifications.

This instrument shall be construed in all respects as a common law bond. It is expressly understood that the time provisions and statute of limitations under §255.05, Florida Statutes, shall not apply to this bond.

In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond regardless of the number of suits that may be filed by Obligee.

Signed and sealed this _____ day of _____, 20_____.

CONTRACTOR (PRINCIPAL)

Signed, sealed and delivered
in the presence of:

By:_____

Witnesses as to Contractor

Name:_____

Title:_____

STATE OF _____

CITY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ___ day of _____, 20___, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced _____ as identification.

Notary Public (Signature) :_____

Printed Name: _____

My Commission Expires: _____ (AFFIX NOTARY SEAL)

SURETY

SIGNATURE: _____

SEAL

PRINTED NAME AND TITLE: ATTORNEY IN FACT

EXHIBIT 6: CONTRACTOR'S FINAL PAYMENT AFFIDAVIT FORM

STATE OF FLORIDA

CITY OF _____

Before me, the undersigned authority, personally appeared _____, who after being duly sworn, deposes and says:

(1) He or she is the (title) _____, of _____, which does business in the State of Florida, hereinafter referred to as the "Contractor."

(2) Contractor, pursuant to that certain Work Order dated _____ ("Contract") with the City of Gainesville, Florida, a municipal corporation and political subdivision of the State of Florida, hereinafter referred to as the "Owner," has furnished or caused to be furnished labor, materials, and services for _____, as more particularly set forth in said Contract.

(3) This affidavit is executed by the Contractor in accordance with §713.06 of the Florida Statutes for the purposes of obtaining final payment from the Owner in the amount of \$_____.

(4) Contractor certifies, represents and warrants that it has paid all persons defined in §713.01, Florida Statutes, who furnished labor, services, or materials for the prosecution of the Work provided for in the Contract ("Claimants"), all amounts owed them from any previous payments received by Contractor from the Owner and has not withheld any such amounts.

(5) Contractor certifies, represents and warrants that all Work to be performed under the Contract has been fully completed, and all Claimants have been paid in full.

(6) In accordance with the Contract Documents and in consideration of \$_____ paid, Contractor releases and waives for itself and all Claimants, including their successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against Owner relating in any way to the performance of the Contract.

(7) Contractor certifies, represents and warrants for itself and its subcontractors, materialmen, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for which Owner might be sued or for which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid.

Contractor:

By: _____

Its: _____

Date: _____

Witnesses

[Corporate Seal]

STATE OF _____

CITY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ___ day of _____, 20___, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced _____ as identification.

Notary Public (Signature) _____

Printed Name: _____

My Commission Expires: _____

(AFFIX NOTARY SEAL)

EXHIBIT 7: FINAL PAYMENT BOND WAIVER FORM

WAIVER OF RIGHT TO CLAIM AGAINST THE PAYMENT BOND (FINAL PAYMENT)

OWNER: City of Gainesville, Florida, a municipal corporation and political subdivision of the State of Florida

CONTRACTOR:

PROJECT: Work Order dated _____ (“Contract”) for labor, materials, and services for _____.

The undersigned Claimant, for itself and its successors and assigns, and in consideration of the final payment made in the amount of \$_____, hereby waives and releases its right to claim against the payment bond, and further waives, releases and discharges the Owner and Contractor from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, for labor, services or materials furnished through _____(insert date) to_____, on the job of the City of Gainesville, Florida, a municipal corporation and political subdivision of the State of Florida, for improvements associated with the above referenced Project.

DATED ON _____.

Claimant:_____

By: _____

(Name)

Title: _____

(Print Title)

STATE OF _____

CITY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ___ day of _____, 20___, by _____, as _____ of _____,

a _____ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced
_____ as identification.

Notary Public (Signature) _____

Printed Name: _____

My Commission Expires: _____

(AFFIX NOTARY SEAL)

EXHIBIT 8: CERTIFICATE OF INSURANCE

PART 9 – EXHIBITS

The following documents/forms are included in this section:

- A. Proposer Verification Form
- B. Drug Free Workplace Form
- C. E-Verify Form

PROPOSER VERIFICATION FORM

REGISTERED TO DO BUSINESS IN THE STATE OF FLORIDA

Is Proposer registered with Florida Department of State's, Division of Corporations, to do business in the State of Florida?

YES NO (refer to Part 1, 1.6, last paragraph)

If the answer is "YES", provide a copy of SunBiz registration or SunBiz Document Number (# _____)

If the answer is "NO", please state reason why: _____

DIVERSITY AND INCLUSION (Applies to solicitations above \$50,000)

Does your company have a policy on diversity and inclusion? YES NO

If yes, please attach a copy of the policy to your submittal.

Note: Possessing a diversity and inclusion policy will have no effect on the City's consideration of your submittal, but is simply being requested for information gathering purposes.

Proposer's Name

Printed Name/Title of Authorized Representative

Signature of Authorized Representative

Date

LOCAL PREFERENCE (Check one)

Local Preference requested: YES NO

A copy of the following documents must be included in your submission if you are requesting Local Preference:

- Business Tax Receipt
- Zoning Compliance Permit

QUALIFIED SMALL BUSINESS AND/OR SERVICE DISABLED VETERAN BUSINESS STATUS (Check one)

Is your business qualified, in accordance with the City of Gainesville's Small Business Procurement Program, as a local Small Business? YES NO

Is your business qualified, in accordance with the City of Gainesville's Small Business Procurement Program, as a local Service-Disabled Veteran Business? YES NO

DRUG-FREE WORKPLACE FORM

The undersigned bidder in accordance with Florida Statute 287.087 hereby certifies that

_____ does:

(Name of Proposer)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for the drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this bidder complies fully with the above requirements.

Proposer's Signature

Date

E-VERIFY CERTIFICATION FORM

If awarded:

The Contractor shall comply with all applicable requirements of Section 448.095, Florida Statutes, including but not limited to: 1) the Contractor shall register with and use the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees of the Contractor during the term of this Agreement; and 2) the Contractor shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise register with and use the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees of the subcontractor during the term of this Agreement. Section 448.095, Florida Statutes, states the statute must be construed in a manner that is fully consistent with any applicable federal laws or regulations, and therefore this section does not apply to this Agreement to the extent that this section would be inconsistent with any federal laws or regulations that are applicable to this Agreement.

As the person authorized to sign the statement, I certify that this bidder complies fully with the above requirement.

Bidder's Name

Printed Name/Title of Authorized Representative

Signature of Authorized Representative

Date

PART 10 – NO RESPONSE SURVEY

GENERAL GOVERNMENT PROCUREMENT DIVISION SURVEY SOLICATION INFORMATION

RFP #: PRCA-240008-WB

DUE DATE: August 29, 2023
@ 3:00 pm

PROPOSAL TITLE: Construction Manager at Risk for the reconstruction of the historic Thelma Boltin Center

IF YOU DO NOT BID

Please check the appropriate or explain:

- _____ 1. Not enough bid response time.
- _____ 2. Specifications not clear.
- _____ 3. Do not submit bids to Municipalities.
- _____ 4. Current work load does not permit time to bid.
- _____ 5. Delay in payment from Governmental agencies.
- _____ 6. Do not handle this item.
- _____ 7. Other: _____

Proposer Name: _____

Address: _____

Are you a small business? YES NO

Are you a service-disabled veteran business? YES NO

If you choose to not bid, complete this form, and either upload it into DemandStar.com or email to the procurement specialist.