



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING

July 12, 2016

**7:00 p.m., Community Center, 3048 S. Atlantic Ave.
Daytona Beach Shores, FL 32118**

Upon being recognized, a member of the public shall proceed to the podium and give his or her name and address and may, thereafter, speak for a maximum of three minutes on any matter relevant to a specific agenda item. During "Audience Comments," a member of the public may speak on any matter relevant to City business which is not on the agenda, for a maximum of three minutes in accordance with Section 2-1.1(d) and 2-2 of the City Code. In accordance with Section 2-2, during periods set aside for public discussion any person desiring to speak shall secure a form located at the agenda table, complete the form and present it to the City Clerk so the speaker can be recognized by the presiding officer. The use of profanity, obscene language, threats or any violent or abusive conduct by any person shall constitute a violation of this section. It shall be the duty of the Director of Public Safety, upon the order of the presiding officer at any such meeting, to forcibly, if necessary, evict any person violating the provisions of this section from the Council Meeting Hall. Any such violation shall subject the offender, upon conviction thereof, to a fine and/or imprisonment as prescribed by Section 1-8.

CALL TO ORDER BY MAYOR

ROLL CALL BY CITY CLERK

CEREMONIAL MATTERS:

PRAYER

PLEDGE OF ALLEGIANCE

1. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

BUSINESS OF THE CITY COUNCIL:

ORDER OF BUSINESS

- 2. APPROVAL OF THE MINUTES:** June 28, 2016 City Council Meeting
- 3. CONSENT AGENDA:** None.
- 4. REPORTS OF THE CITY ATTORNEY:**
- 5. REPORTS OF THE CITY MANAGER:**

OLD BUSINESS: None.

NEW BUSINESS:

6. CONSIDERATION OF CONSTRUCTION MANAGER CONTRACT

7. COUNCIL COMMENTS:

8. AUDIENCE REMARKS/PUBLIC COMMENTS:

9. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

10. ADJOURNMENT:

Notice is hereby given to all interested parties that if a person should decide to appeal any decision made at the aforementioned meeting of the City Council, such person will need a recording of the proceedings conducted at such meeting, and for such purpose he or she may need to ensure that a verbatim record of the proceedings was made; such record to include testimony and evidence upon which any appeal shall be based. Please be advised that all City Council Meetings are recorded. Note: Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations for this public meeting should contact the Office of the City Clerk at 2990 S. Atlantic Avenue, Daytona Beach Shores, FL 32118, or telephone 386-763-5364 at least seven working days prior to the meeting.

PRESENTATIONS AND PUBLIC NOTICES:

MINUTES
CITY COUNCIL MEETING
June 28, 2016
3048 S. Atlantic Ave. Daytona Beach Shores, FL 32118

Present: Mayor Harry Jennings, Vice Mayor Peggy Rice, CouncilMember Jennie Celona CouncilMember Lorraine Geiger and CouncilMember Billie Wheeler. *Staff: City Manager Michael Booker, City Clerk Cheri Schwab, City Attorney Lonnie Groot, Finance Director Steve Whitmer, Community Services Director Fred Hiatt, and Public Safety Director Stephan Dembinsky.*

1. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES: None.

2. APPROVAL OF THE MINUTES: May 24, 2016 City Council Meeting

CMBR RICE moved, seconded by CMBR CELONA to approve the minutes of May 24, 2016.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Council Member Lorraine Geiger, CouncilMember Billie Wheeler, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

3. CONSENT AGENDA:

- Monthly Departmental Reports
- Monthly Financial Report
- Approval to spend \$12,000 from Contraband
- Appoint Charles Pula as alternate to Planning & Zoning Board
- Appoint Carol Conforti to regular member of Culture & Entertainment
- Approval for 3rd Amendment for Fire Suppression with Volusia County

CMBR CELONA moved, seconded by CMBR GEIGER to approve the consent agenda.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Council Member Lorraine Geiger, CouncilMember Billie Wheeler, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

4. REPORTS OF THE CITY ATTORNEY:

The City Attorney informed the Council that he had negotiated a proposed settlement on a Code Enforcement lien on the property at 2825 S. Atlantic Avenue. The case began in 2015, and it took 79 days for compliance. The case came before the board in March 2016, with a fine due of \$11,850 plus Administrative costs of \$300. During this time, the house has sold and money was held back from the closing. A negotiated settlement of \$2500 was agreed upon and he asked Council to approve and accept it.

CMBR CELONA, moved, seconded by CMBR RICE to accept the proposed settlement of \$2,500 for the Code Enforcement case regarding 2825 S. Atlantic Avenue.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Council Member Lorraine Geiger, CouncilMember Billie Wheeler, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

5. REPORTS OF THE CITY MANAGER:

The City Manager informed the council that the fence by the tennis courts on Oceans West Blvd. would be repaired in house. The eastern portion began to lean outward after severe winds a few weeks ago.

Director Dembinsky reminded the audience to be aware of storms approaching and potential lightning strikes.

OLD BUSINESS:

6. Ordinance 2016-08 AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA AMENDING SECTION 2 ½ - 13 OF THE *CODE OF ORDINANCES OF THE CITY OF DAYTONA BEACH SHORES* RELATING TO FINGERPRINTING REQUIREMENTS AND ADULT ENTERTAINMENT LICENSES; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION, DIRECTIONS TO THE CODE CODIFIER AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE. **Second Reading and Public Hearing.**

CMBR WHEELER moved, seconded by CMBR RICE to adopt Ordinance 2016-08 on second reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Council Member Lorraine Geiger, CouncilMember Billie Wheeler, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

NEW BUSINESS:

7. Consideration of pedestrian island construction agreement with FDOT

City Manager Booker explained that this process began four years ago. There were three crossings approved by FDOT. The crossing at Publix will have an “on demand” button installed, the crossing near ABC will be enlarged, and a new crossing will be installed near Florida Shores Blvd.

CMBR CELONA moved, seconded by CMBR WHEELER to approve the pedestrian island construction agreement with FDOT.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Council Member Lorraine Geiger, CouncilMember Billie Wheeler, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

8. Consideration of community center Construction Manager Contract

Staff has met with Mr. Weigel and has a preliminary contract. Due to a scheduling conflict, it was not finalized in time for the agenda. It should be ready for the next meeting.

9. Consideration of bids to resurface current McElroy Court

The City Manager informed the council that the court in McElroy Park was previously bid to be resurfaced for tennis. The lowest bidder was a company called NIDY. They are an excellent company and the city has used them in the past. The cost to resurface for tennis play would be \$33,691. After receiving this bid, Senior Center Director, Roni Jackson, inquired if the courts could be changed to pickleball. Nidy provided a quote of \$28,577 to resurface for two pickleball courts. Mr. Booker asked the council to decide how to resurface the courts. He noted that there is a hard court available for play at the Racquet Club.

Senior Center Director Roni Jackson explained to the council that even with eight current courts, they are overcrowded. Changing the tennis court into two pickleball courts will cost less and allow upper level players to have a designated court.

Twelve audience members spoke in favor of changing the court from tennis to pickleball. They stated reasons from overcrowding, to tournament use, clinics and beginner introduction classes. Many of the players come from all over the county (and beyond) to play at our courts. They stated that when they travel to play in other areas, they always speak highly of their “home” court in Daytona Beach Shores.

Audience member Wyc Woodfin spoke in opposition. He asked that the court remain a tennis court to keep the variety of sports available in McElroy Park.

CMBR RICE moved, seconded by CMBR GEIGER to resurface the court in McElroy Park as two pickleball courts.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Council Member Lorraine Geiger, CouncilMember Billie Wheeler, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

10. Discussion of homeless shelter donation

The City Manager informed the council that money was allocated in the budget to provide financial assistance to the proposed homeless shelter. At this time, surrounding cities are fragmented and some are doing their own thing. He suggested leaving the money in the budget until final decisions are made by the others. CMBR Wheeler was in agreement. She hoped the issue will be resolved soon.

11. Appoint voting delegate for 90th Annual FLC Conference in August

CMBR CELONA nominated the Vice Mayor, Peggy Rice, as the voting delegate. This was seconded by CMBR WHEELER.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Council Member Lorraine Geiger, CouncilMember Billie Wheeler, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

12. COUNCIL COMMENTS: CMBR Rice thanked the City Manager for his work on the Administrative Rules for Open House signs. She has been in touch with the Principal of Longstreet Elementary. They are working on a plan to identify and provide help to students and their families who need it. CMBR Rice inquired if portable soccer goals could be placed in McElroy Park for use. CMBR Wheeler thanked everyone for their support with her husband's passing. CMBR Celona congratulated the Public Safety Department on the recent 911 call on the beach. CMBR Geiger stated the Culture & Entertainment Board held another great concert last Friday night. There will be two concerts in July. Mayor Jennings thanked the Vice-Mayor for her work with Longstreet Elementary.

13. AUDIENCE REMARKS/PUBLIC COMMENTS: None.

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA: Construction Manager contract

15. ADJOURNMENT: The meeting ended at 8:03 pm.

**MAYOR
HARRY H. JENNINGS**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB

CONSENT AGENDA:

Reports of the City Attorney

Reports of the City Manager

**FORM OF AGREEMENT
BETWEEN CITY OF DAYTONA BEACH SHORES
AND CONSTRUCTION MANAGER**

THIS AGREEMENT made this ___ day of _____, 2016 by and between City of Daytona Beach Shores, a Florida municipality, whose mailing address is 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, hereinafter referred to as the "City", and the Construction Manager; to wit:

A. M. Weigel Construction, Inc., a Florida corporation.
166 South Palmetto Avenue
Daytona Beach, Florida 32114
(386) 257-6691
Federal Tax Identification Number: 20-0833333

hereinafter referred to as the "CM".

**ARTICLE 1
THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT**

The CM accepts the relationship of trust and confidence established between it and the CITY by this Agreement. It covenants with the CITY to furnish its best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the CITY. The CM agrees to furnish efficient business administration and superintendence and use its best efforts to complete the project, as defined herein, in the best, professional and soundest way and in the most expeditious, high quality and economical manner consistent with the best interests of the CITY.

1.1 The Construction Team: The CM, the CITY and the Architect-Engineer, hereinafter referred to as the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The Architect-Engineer will provide leadership during the Preconstruction Phase with support from the CM and the CM shall provide leadership to the Construction Team on all matters relating to construction. The specific representatives of the Construction Team are shown in Exhibit "A" attached hereto.

1.2 Extent of Agreement: This Agreement for the construction of the CITY's Community Center, hereafter known as the "Project", is between the CITY and the CM and this Agreement supersedes any prior negotiations, representations or agreements between the parties.

This Agreement shall not be superseded by any provisions of the Contract Documents and may be amended only by written instrument, of equal dignity and formality herewith, by both CITY and CM. The Contract Documents include this Agreement, the agreement between the CITY and the Architect-Engineer, the General Conditions to the Contract and the drawings, specifications and other descriptive documents defining the work to be included for the construction of the Project.

Should the CITY not approve the Guaranteed Maximum Price (hereinafter referred to as the "GMP") this Agreement will terminate without the parties having obligations one to another and their relationship shall end with the CM will be dismissed without payment of any kind.

1.3 Definitions (which apply regardless of the use of capitalization of terms in the Agreement):

Architect-Engineer means Hall and Ogle Architects, Inc., 208 Magnolia Avenue, Daytona Beach, Florida 32114.

Construction Authorization means a written work order based on a defined scope of work excluding CMs fees as specified in Article 8, prepared by the Project Director and issued to the CM. Construction Authorizations shall be used prior to the date of the GMP Amendment and all work performed pursuant to Construction Authorizations shall be included in the GMP.

Estimate means the CM's latest estimate of probable project construction cost.

Notice to Proceed means separate notices to proceed will be issued by the City Manager, or designee, for the pre-construction phase and the construction phase. A Notice to Proceed will not be issued until the required bonds, insurance certificates and copies of licenses have been submitted and a permit has been issued.

CITY's Representatives means the City Manager or designees.

Permitting Authority means the City of Daytona Beach Shores Department of Community Services, 2990 South Atlantic Avenue, Daytona Beach Shores, Florida. The Permitting Authority issues building permits and is responsible for code inspections on projects administered by the CITY. A *Florida Fire Code* permit must be obtained from the authority having jurisdiction.

Project means the totality of work to be performed under this Agreement. The Project consists of planning, permitting, construction, code inspection, closeout and warranty for the CITY's Community Center all as necessary to build the component parts of the Project Budget identified in Exhibit "B" as well as the Contract Documents in their totality. The Project includes, but is not limited to, the work that is set forth and contemplated in the Project plans that have been developed by the Architect-Engineer constituting the CITY's Community Center.

Project Director means the person designated by the CITY to provide direct interface with the CM with respect to the CITY's responsibilities. The Project Director will be the CITY's Director Community Services Department.

Project Manual means the volume assembled for the work, which can include the

bidding requirements, sample forms, this Agreement, conditions of this Agreement and technical specifications.

1.4 CITY's Project Budget. The CITY's funds budgeted and requested for construction of the Project. The CITY's Project Budget is \$6,000,000 identified in Exhibit "B", including, but not limited to, any and all Design Fees, CM Fees, costs of the work of the Project including, but not limited to, all tests and construction, contingencies, as defined in Articles 8 and 9 of this Agreement, and furniture, fixtures and equipment. This acknowledgement of the CITY's budgeted funds is not to be construed as the GMP. A GMP will be offered by separate documentation as outlined in Article 7 of this Agreement.

1.5 Incorporated Definitions: A word or phrase used in this Agreement with initial capitalization and not otherwise specifically defined herein shall have the meaning specified and defined in the *General Conditions of the Contract for Construction* relating to the Project (hereinafter referred to as the "Contract for Construction"). Other terms may be defined in subsequent provisions of this Agreement.

ARTICLE 2 **CM'S SERVICES**

The services which the CM shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

2.1.0 Project Management Information System (hereinafter referred to as the PMIS): The PMIS shall be described in terms of the following major subsystems:

- 2.1.1 Project Reporting;
- 2.1.2 Scheduled Control System;
- 2.1.3 Cost Control System; and
- 2.1.4 Project Accounting System.

2.1.1 Project Reporting: Commencing immediately after Contract for Construction award, the CM shall prepare and furnish to the CITY (3 copies) and Architect-Engineer (2 copies) each month, written reports containing the following:

A. A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including, but not limited to, code violations found by the Permitting Authority.

B. A Monthly Cost Narrative describing the current construction cost estimate status of the Project.

C. A Monthly Scheduling Narrative summarizing the current status of the overall Project

schedule. This report shall include, but not be limited to, an analysis of the various Project schedules, a description and analysis of the Project's critical path, and other analyses as necessary to compare planned performance with actual performance.

D. A Monthly Accounting Narrative describing the current cost and payment status of the entire Project. This report shall, at a minimum, relate current encumbrances and expenditures to the budget allocations.

E. A Monthly Construction Progress Report during the construction phase summarizing the work of the various subcontractors. This report shall include, but not necessarily be limited to, information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations programs, permits, construction problems and recommendations, and plans for the succeeding month.

F. Daily Construction Diary during the construction phase describing events and conditions on the Project site.

G. The CM shall implement a direct tax savings purchase plan approved by the Florida Department of Revenue and the CITY that, upon acceptance, will be part of the CM's services.

H. The report outlined in Subsection 2.1.1, above, shall be maintained at the site available to the CITY and the Architect-Engineer.

2.1.2 Scheduled Control System:

A. Master Project Schedule. - Upon award of this Agreement, the Construction Team, shall submit a Master Project Schedule covering, at a minimum, the planning and design approvals, construction and CITY occupancy of the Project. This schedule will serve as the framework for the subsequent development of all detailed schedules. The Master Project Schedule shall be produced and updated monthly throughout the implementation of the Project by the CM.

B. Construction Schedule And Requirements For Overtime Work For the Projects. Within 30 days after the date of the Contract for Construction, the CM shall prepare and submit to the Architect-Engineer a construction schedule graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the Project, showing the sequence in which the CM proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. Failure of the CM to develop, submit and update a construction schedule as required by the CITY shall be sufficient grounds for the Architect-Engineer to find the CM in substantial default and certify to the CITY that sufficient cause exists to terminate this Agreement or to withhold any payment. It is the plenary responsibility of the CM to manage the construction schedule to ensure that

overtime pay is not required. Any overtime will be compensated by the CM and not be cause to increase the GMP.

C. Schedules. The CM shall prepare and incorporate into the schedule the following schedules:

(1). Pre-Bid Schedules. - The CM shall prepare a construction schedule for work encompassed in each bid package. The schedules shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for the completion of the Contract for Construction by the successful bidder. It shall, at a minimum, detail, describe and define the interrelationships between the work of the successful bidder and that of subcontractors and shall establish milestones keyed to the overall Master Project Schedule.

(2). Subcontractor Construction Schedules. - Upon the award of each subcontract, the CM shall jointly with the subcontractor, develop a schedule taking into account the work schedule of the other subcontractors that includes pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

(3). Occupancy Schedule. - The CM shall jointly develop with the Architect-Engineer and CITY a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to CITY occupancy. The occupancy schedule shall be produced and updated monthly from its inception through final CITY occupancy.

2.1.3 Cost Control System: - The operation of this programmatic subsystem of construction management and cost containment shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the Project's requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other Project costs, will not exceed the maximum total Project budget (GMP). The cost control system shall, at a minimum, incorporate features of Building Information Modeling (hereinafter referred to as "BIM") that will allow for continuous cost tracking as scope changes occur. Requirements of this subsystem shall include, at a minimum, the following submissions at the following phases of the Project:

Estimates:

A. At completion of schematic pre-construction phase for each item or bid package.

B. At completion of design development documents for each item bid package.

C. At Completion of 100% Construction Documents Phase For Each Item Or Bid Package.

D. At establishment of the GMP.

E. Prior to the bid of each bid package, when the working drawings and specifications are complete, the CM shall prepare and submit a cost estimate on the basis of a quantitative material take-off with current local cost for each bid group by subcontract package. (Construction Documents Estimates – Bid Phase).

2.1.4 Project Accounting System: - The operation of this programmatic subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the project, cash flow, costs, change orders, payments and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced and amounts payable. This subsystem shall be produced and updated monthly and includes, at a minimum, the following reports which together will serve as a basic accounting tool and an audit trail. The CM shall retain all Project files in a manner consistent with sound and proper accounting procedures that would be sufficient for an audit by, or of, the CITY for a period of 5 years after final completion of the Project. This report shall also provide for accounting by building and site element.

A. Costs Status Report presenting the budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall describe all approved change orders for each contract which, when added to the base commitment, will become the total commitment. Pending change orders shall also be shown to produce the total estimated probable cost to complete the Project work.

B. A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.

C. A Detailed Status Report showing the complete activity history of each item in the project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.

D. A Cash Flow Diagram showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.

E. A Job Ledger shall be maintained as necessary to supplement the operation of the project accounting subsystem. The job ledger shall be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

2.2 Design Review And Recommendations:

A. Review and Recommendations and Warranty. - The CM shall familiarize itself thoroughly with all aspects of the work involved in the completion of the Project in accordance herein including, but not limited to architectural, civil, mechanical, plumbing, electrical, fire protection and structural specifications and shall follow the development of design from Preliminaries through Working Drawings. The CM shall make recommendations with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the Architect-Engineer and the CITY in evaluating alternative comparisons versus long term cost effects. The evaluation shall analyze and articulate the benefits of the speed of erection and early completion of the Project. The CM shall furnish pertinent information as to the availability of materials and labor that will be required. The CM shall submit to the CITY, the Permitting Authority and the Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. The CM shall comprehensively call to the Project Director's and the Architect-Engineer's attention any apparent defects in the design, drawings and specifications or other documents. The CM shall prepare an estimate of the construction cost utilizing the unit quantity survey method.

B. Review Reports and Warranty. - Within 30 days after receiving the Construction Documents, the CM shall perform a specific review thereof, focused upon factors of a nature encompassed in Subsection A, above, and on factors set out in Subsection E. Promptly after completion of the review, the CM shall submit to the Project Director and the Permitting Authority, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as the CM may deem appropriate, and any and all actions taken by the Architect-Engineer with respect to same, any comments the CM may deem to be necessary and appropriate or beneficial to the Project, with respect to separating the work into separate contracts, alternative materials as well as providing all comments required under Section 2.2E.

At completion of the CM's review of the plans and specifications, except only as to specific matters as may be identified by appropriate comments pursuant to this Section, and as might be determined by a diligent inspection of the plans and specifications, the CM shall warrant, without assuming any architectural or engineering responsibility, that to the best of its knowledge and applying its professional expertise, the plans and specifications for the Project, and each and every component thereof, are consistent, practical, feasible and constructible. Based on its review, the CM shall certify that it has not observed any defect, error, or deficiency in the Contract for Construction Documents or any inconsistency between the Contract for Construction Documents and applicable law. The CM shall warrant that the work described in the plans and specifications for the various bidding packages, as may be modified by change order, as in normative or as is practical, feasible, and constructible within the scheduled construction time. With regard to the foregoing, specifically, and with regard to all matters set forth in this Agreement, generally, the CITY disclaims any warranty that the plans and specifications, or any other pertinent documents, for the Project are accurate, practical, consistent or constructible.

C. Long Lead Procurements. - The CM shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the CM shall notify the subcontractors, the Project Director and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the Architect-Engineer has completed drawings and technical specifications and the CM has obtained permitting approval, the CM shall prepare invitations for bids. The CM shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise the Project Director, the CITY and the Architect-Engineer of any problems or prospective delay in delivery.

D. Separate Contracts Planning. - The CM shall review the design with the Architect-Engineer and make recommendations to the CITY and to the Architect-Engineer with respect to dividing the work in such manner as will permit the CM to take bids and award separate construction subcontracts on the current schedule while the design is being completed.

E. Interfacing.

(1). The CM shall take such measures as are appropriate to provide that all construction requirements shall be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work relating to the Project on schedule. Particular attention shall be given by the CM to provide that each bid package clearly identifies the work included in that particular separate subcontract relating to the Project, its schedule for start and completion and its relationship to other separate managers of contracts and related matters.

(2). Without assuming any Project design responsibilities of the Architect-Engineer, the CM, as discovered, shall include in the reports required under Subsection 2.2B of this Agreement comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Project Director and the Architect-Engineer may arrange for necessary corrections.

F. Job-Site Facilities. - The CM shall arrange for all job-site facilities necessary to enable the CM and the City and its representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction. Should any jobsite facilities be required by the City or its representatives and the Architect/Engineer, a detailed list shall be provided to the CM prior to establishment of the GMP for inclusion in the General Conditions of the Construction Contract Documents.

Tangible personal property, otherwise referred to as "job-site facilities", include, but are not limited to, such things as trailers, toilets, computers and any other equipment

necessary to carry on the Project. The method of acquiring such job-site facilities, which are planned to become the property of the CITY at the conclusion of the Project, shall be evaluated based on cost over the life of the Project. Owning property/facilities vis-a-vis leasing property/facilities shall be considered by the CM obtaining at least 2 proposals for leasing and at least 2 proposals for purchasing and then analyzing which is least expensive over the usage life of the item. The CM shall present its written evaluation with recommendation to the CITY for approval. When the CM proposes to supply job-site facilities from its own equipment pool, it shall first evaluate buying vis-a-vis leasing as discussed herein. If leasing is found to be the least expensive approach, then the CM may lease such job-site facilities from its own equipment pool at a price not greater than the lower of the 2 lease proposals obtained.

For all such facilities purchased which may become the property of the CITY at the conclusion of the Project, the CM shall maintain the City's ownership responsibilities of such facilities until the Project's conclusion and turn over the property after such good and sound care. Reimbursement for the costs of such equipment may be made, upon submission of an appropriate invoice to the CITY, at the conclusion of the Project at the documented purchase price. At that time, the CM shall provide the CITY with a complete inventory for each unit of equipment. The inventory shall describe, at a minimum, the equipment and identify the purchase price, serial number, model number and condition as well as all warranties and related matter. If the equipment has a title associated with its ownership, the title shall be properly transferred to the CITY or to its designee.

The CM is responsible for proper care and maintenance of all equipment while in its control. At the time of transfer to the CITY, the CITY may refuse acceptance of the equipment if the CITY determines, in its sole discretion, that the equipment has not been properly cared for by the CM or that such acquisition would not otherwise be in the best interest of the CITY. In such event, the CM will be reimbursed for such item in accordance with Section 9.2D of this Agreement.

G. Weather Protection. - The CM shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Project work in periods when extreme weather conditions are likely to be experienced. The CM shall submit to the Construction Team its recommendations as to needed requirements of this nature and as to the Contract for Construction and other contracts in which these matters and requirements should be included.

H. Market Analysis and Stimulation of Bidder Interest.

(1). The CM shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the project; he shall make analysis as necessary to (1) determine availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (2) in light of such determinations, make recommendations as may be appropriate with respect to

long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.

(2). As various bid packages are prepared for bidding, the CM shall submit to the Project Director and the Architect-Engineer a list of potential bidders. The CM shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.

(3). The CM shall carry out an active program of stimulating interest of qualified subcontractors in bidding on the work and of familiarizing those bidders with the requirements of this project.

2.3 Construction Phase:

A. CM's Staff. - The CM shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the CM to accomplish its responsibilities and to coordinate, inspect and provide general direction of the work and progress of the subcontractors and the CM shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "C" to this Agreement. The CM shall not change any of those persons named in Exhibit "C" unless mutually agreed to by the CITY and the CM. In such case, the CITY shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld or delayed.

B. Lines of Authority. - The CM shall establish and maintain lines of authority for its personnel, and shall provide a written explanation of the lines of authority to the CITY and all other affected parties such as the code inspectors of the Permitting Authority, the subcontractors, the Architect-Engineer and the CITY's representatives, to provide general direction of the work and progress of the various phases and parts of the Project and with regard to the subcontractors working on the Project. The CITY and the Architect-Engineer may attend meetings between the CM and its subcontractors, however, such attendance shall not diminish either the authority or responsibility of the CM to administer the subcontractors or attain Project completion.

C. Schedule and Project Manual Provisions. - The CM shall provide subcontractors and the CITY, CITY representatives and the Architect-Engineer with copies of the current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the CM's work to the work of its subcontractors and suppliers to enable them to perform their respective tasks in order to ensure that the development and construction of the Project progresses in a smooth and efficient manner in conformance with the overall project schedule and the critical path of the Project work to completion on time. The schedule shall include, but not be limited to, all phases of the construction work, material supplies, long lead procurement, approval of shop drawings, change orders in

progress, schedules for change orders, and performance testing requirements. The CM shall advise the CITY, its representatives and the Architect-Engineer of their required participation in any meeting or inspection giving each at least 1 week advance written notice unless such notice is made impossible by conditions beyond the control of the CM. The CM shall hold job-site meetings at least once each month with the Construction Team and at least once each week with the subcontractors and the Architect-Engineer's Field Representative, or more frequently as required by Project work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

D. Solicitation of Bids.

(1) Without assuming responsibilities of the Architect-Engineer, and unless waived in writing by the CITY, the CM shall prepare invitations for bids, or requests for proposals/qualifications when applicable, for all procurements of long lead items, materials and services, and for subcontractor contracts. Such invitations for bids and other procurement and purchasing processes and procedures shall be prepared in accordance with controlling State law using the following guidelines:

(a), Contracts over \$1,000 but not exceeding \$50,000 may be entered into by the CM with the firm which submits the lowest written quotation. The CM shall obtain a minimum of 2 quotations. These quotations shall be entered on a bid tabulation sheet and a copy of such tabulation sent to the CITY and the Architect-Engineer. The successful quotation shall be confirmed by written contract or purchase order to the low bid firm defining the scope and quality of work to be provided.

(b). Contracts exceeding \$50,000 but less than \$200,000 may be entered into by the CM with the firm who is qualified and submits the lowest responsive proposal. The CM shall request at least 3 firms to submit written proposals based on written drawings and/or specification. The written proposals shall all be presented to the CITY along with a tabulation of the results and a recommendation as to the best proposal.

(c). Contracts exceeding \$200,000 but not exceeding \$500,000 may be entered into by the CM with the firm who is qualified and submits the lowest responsive proposal. The CM shall advertise these projects at least once with the last advertisement appearing at least 21 calendar days, according to Section 255.0525(2), *Florida Statutes*, prior to the established bid opening date. These proposals shall be based on approved plans and specifications. Bids shall be received and opened publicly, in the presence of the CITY, at the location, date and time established in the bid advertisement.

(d). Contracts exceeding \$500,000 shall be treated the same as described under (c) above except that the advertisement shall be run, according to Section 255.0525(3), *Florida Statutes*, for at least 30 days prior to the established bid opening and at least five (5) days prior to any scheduled pre-bid conference.

(e). Individual purchases of materials or rentals or leases of equipment amounting to less than \$5,000.00 each may be made without bids or quotes when reasonably necessary to expedite work on the project; provided, however, that the CM shall not divide or separate a procurement in order to avoid the requirements set forth above.

(f). Site utilities may be acquired at market rates from the entity (ies) providing such in the franchise area.

(2). As part of such preparation, the CM shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the CM shall be brought to the attention of the Project Director and Architect- Engineer in written form and in a timely manner.

(2). For each separate construction contract exceeding \$25,000, the CM shall, unless waived in writing by the CITY, conduct a pre-bid conference with prospective bidders, the Architect-Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the CM shall transmit these to the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

(3). For all contracts exceeding \$50,000, the CM shall establish a pre-qualification procedure for applicable subcontract trades.

E. Bonds. - In accordance with the provisions of Section 255.05, *Florida Statutes*, the CM shall provide to the CITY, on forms furnished by the CITY, a 100% Performance Bond and a 100% Labor and Material Payment Bond each in an amount not less than the total construction cost as defined in Article 9 of this Agreement and inclusive of the CM's fees.

To be acceptable to the CITY as surety for performance bonds and labor and material payment bonds, a surety company shall comply, at a minimum, with the following provisions:

(1). The surety company shall have a currently valid certificate of authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida and shall be licensed and authorized to conduct business in the State as may be required in accordance with other controlling law.

(2). The surety company shall have currently valid certificate of authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the *United States Code*, and other controlling law, and shall be licensed and authorized to conduct business in the State as may be required in accordance with other controlling

law.

(3). The surety company shall be in full compliance with the provisions of the *Florida Insurance Code* and all other controlling law.

(4). The surety company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued and shall maintain compliance with all controlling law.

(5). If the contract award amount exceeds \$500,000, the surety company shall also comply with the following provisions:

(a). The surety company shall have at least the following minimum ratings in the latest issue of *Best's Key Rating Guide*.

<u>CONTRACT AMOUNT</u>	<u>POLICY HOLDER'S RATING</u>	<u>REQUIRED FINANCIAL RATING</u>
\$500,000 TO \$1,000,000	A-	CLASS I
\$1,000,000 TO \$2,000,000	A-	CLASS II
\$2,000,000 TO \$5,000,000	A-	CLASS III
\$5,000,000 TO \$10,000,000	A-	CLASS IV
\$10,000,000 TO \$25,000,000	A-	CLASS V
\$25,000,000 TO \$50,000,000	A-	CLASS VI
\$50,000,000 TO \$100,000,000	A-	CLASS VII

(b). The surety company shall not expose itself to any loss on any one (1) risk in an amount exceeding 10% percent of its surplus to policyholders, provided:

(i). Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this Section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.

(ii). In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

F. Quality Control. - The CM shall develop and maintain a program, acceptable to the CITY and the Architect-Engineer, to ensure quality control of the Project construction. The CM shall supervise the all Project work of all subcontractors providing instructions to each when their work does not conform to the requirements of the Project's plans and specifications and the CM shall continually exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect

the efficient progress of the Project work. Should disagreement occur between the CM and the Architect-Engineer over acceptability of Project work and conformance with the requirements of the Project's specifications and plans, the CITY shall be the final judge of performance and acceptability.

G. Subcontractor Interfacing. - The CM shall be the single point of interface with all subcontractors for the Project and the CITY and all of its agents and representatives including, but not limited to, the Architect-Engineer. The CM shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the CITY and the Architect-Engineer of their validity and reasonableness, continually acting and performing in the CITY's best interest prior to requesting approval of each change order from the CITY. Before any work is begun on any change order, a written authorization from the CITY must be issued. However, when public health and safety are threatened, the CM shall act immediately to remove the threat to public health and safety. The CM shall also carefully review all shop drawings and then forward the all such documents to the Architect-Engineer for review and actions. The Architect-Engineer will transmit all such documents back to the CM who shall then issue the shop drawings to the affected subcontractor for fabrication or revision. The CM shall maintain a suspense control system to promote expeditious handling of all such matters and associated matters. The CM shall request the Architect-Engineer to make interpretations of the drawings or specifications requested of it by the subcontractors and shall maintain a suspense control system to promote timely response. The CM shall advise the Project Director and Architect-Engineer when timely response is not occurring on any of the above.

H. Permits. - The CM shall secure all necessary building permits from the Permitting Authority and all necessary utility connection permits, the cost of which shall be considered a direct cost item.

I. Job Site Requirements.

(1). The CM shall, as well as performing the articulated Project work and services as set forth in this Agreement, provide for each of the following activities as a part of its construction phase fee:

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

(b). Maintain a roster of companies on the project with names and telephone numbers of key personnel.

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

(d). Provide labor relations management for a harmonious, productive project.

(e). Provide a safety program for the project to meet Federal Occupational Safety and Health Administration requirements. Monitor for subcontractor compliance without relieving subcontractors of responsibilities to perform work in accordance with the best acceptable practice.

(f). Provide a quality control program as developed under Section 2.3F of this Agreement.

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

(h). Travel to and from the CM's home office to the Project site and Architect-Engineer's offices as well as the CITY as the Project requires.

(2). The CM shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:

(a). Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements. A threshold inspector, if required, will be provided by the CITY at its cost.

(b). The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.

J. Job Site Administration. - The CM shall provide, as part of its construction phase fee, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:

(1). Job Meetings. - Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures and ensure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering including, but not limited to, direct tax saving purchases and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work, etc. Review and implement revisions to the Schedule. Monitor and promote safety requirements, etc. In addition, regular Project status meetings shall be held between the Architect-Engineer, the CITY and the CM either biweekly or monthly, whichever is designated by the Project Director.

The CM shall use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.

The CM shall identify party or parties responsible for follow up on any problems, delay items or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is satisfactorily achieved. Require all present to make any problems or delaying event known to those present for appropriate attention

and resolution.

(2). Shop Drawing Submittals/Approvals. - Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Architect-Engineer of such drawings for action, and closely monitor their submittal and approval process.

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

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

(5). Document Interpretation. - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer.

(6). Reports and Project Site Documents. - Record the progress of the Project. Submit written progress reports to the CITY and the Architect-Engineer including, but not limited to, information on the subcontractor's work, and the percentage of completion. Develop and maintain a daily log available to the CITY, the Architect-Engineer and the Permitting Authority inspectors.

(7). Subcontractor's Progress. - Prepare periodic punch lists for subcontractor's work which includes, at a minimum, a detailed description of unsatisfactory or incomplete items and schedules for their completion.

(8). Substantial Completion. - Ascertain when the work or designated portions thereof are ready for the Architect-Engineer's substantial completion inspection. From the Architect-Engineer's list of incomplete or unsatisfactory items, prepare a schedule for completion indicating completion dates for the CITY's review. If the CM desires that the Architect-Engineer conduct a pre-substantial completion inspection in conjunction with the CM's own forces, the Architect-Engineer shall prepare the pre-substantial punch list from which the CM shall develop a completion schedule. The Architect-Engineer shall issue a certificate of substantial completion in a form approved by the CITY when the work on its pre-substantial punch list has been accomplished.

(9). Final Completion. - Monitor the subcontractor's performance on the completion of the Project and provide notice to the CITY and the Architect-Engineer that the Project work is ready for final inspection. Secure and transmit to the CITY, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, warranties and maintenance books including the final completion form in a form approved by the CITY.

(10). Start-Up. - With the CITY's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and

testing by the CM and all other appropriate parties, personnel and entities.

K. Administrative Records. -

The CM shall maintain the following public records at the Project job site:

- contracts or purchase orders;
- purchase orders;
- contract drawings and specifications with addenda;
- meeting minutes;
- lab test reports;
- contract changes;
- "as-built" marked prints;
- daily progress reports;
- correspondence files;
- photographs of Project work progress;
- transmittal records;
- inspection reports
- punch lists;
- PMIS schedule and updates;
- shop drawing submittal/approval logs;
- and monthly progress reports;

The following public records are to be maintained at the CM's home office:

- equipment purchase/delivery logs;
- warranties and guarantees;
- cost accounting records;
- sales tax recovery status report;
- labor costs;
- material costs;
- subcontractor payment exception report;
- equipment costs;
- cost proposal requests;
- payment request records;
- cost-estimates;
- bulletin quotations;
- insurance certificates and bonds;
- material purchase delivery logs;
- technical standards;
- design handbooks;
- operating & maintenance instruction;
- bid/award information;
- bid analysis and negotiations;

suspense (tickler) files of outstanding requirements; and Project Manual.

The Project records shall be available at all times to the CITY and the Architect-Engineer for reference or review and such other purposes as the CITY may determine to exist.

L. CITY Occupancy. - The CM shall provide services during the design and construction phases, which shall provide a smooth and successful transition from construction to CITY occupancy of the Project. The CM shall provide consultation and Project management to facilitate CITY occupancy and provide transitional services to get the work, as completed by the subcontractors, on time, and such the Community Center shall be "on line" and in such condition as will satisfy City and allow the Community Center to engage in comprehensive operations with all operational requirements being in place and fully satisfied.

The CM shall conduct the CM's preliminary punch list inspection and coordinate the completion of all punch list work to be accomplished in a plenary manner with CITY occupancy requirements in mind.

The CM shall fully catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the CITY in such a manner as to promote their usability. The CM shall provide operational training, in equipment use, for building operators. All training sessions shall be videoed and the video provided to the CITY as part of the close-out documents.

The CM shall secure required guarantees and warranties while ensuring that they are administratively in order and perfected and assemble and deliver the organized and catalogued assembly of documents to the CITY in a manner that shall facilitate their maximum enforcement and assure their meaningful implementation.

The CM shall continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible in accordance with technical requirements and capabilities available in the field of construction contract and project management.

The CITY will not occupy or take control of the Project until the above items mandated in this Agreement have been completed and the "Substantial Completion" and "Start-Up" requirements as specified in herein have been fully completed to the CITY's satisfaction excluding the requirements for a warranty inspection 11 months after CITY Occupancy and the placement of the "As-Built". "Warranties" and "Record Drawings" shall be furnished to the CITY at final completion.

M. Warranties. - Where any work is performed by the CM's own forces or by subcontractors under contract with the CM, the CM shall warrant that all materials and equipment included in such Work shall be new except where indicated otherwise in Contract Documents, and that such work shall be of sound and high quality, free from

improper workmanship and defective materials and in conformance with the drawings and specifications. With respect to the same work, the CM shall, further, correct all work found by the CITY to be defective in material and workmanship or not in conformance with the drawings and specifications for a period of 1 year from the date of substantial completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the specifications. The CM shall collect and deliver to the CITY any specific written warranties given by others as required by the Contract Documents. Also, the CM shall conduct, jointly with the CITY and the Architect-Engineer, a warranty inspection 11 months after the date of CITY occupancy.

ARTICLE 3 **CITY'S RESPONSIBILITIES**

3.1 CITY's Information: - The CITY shall provide information regarding its requirements for the Project that is generally available as a property owner.

3.2 CITY's Representative: - The CITY shall designate a representative who shall be acquainted with the Project and shall define the lines of CITY authority to approve Project construction budgets, and changes in Project. This person shall render decisions promptly and furnish information expeditiously.

3.3 Architect-Engineer's Agreement: - The CITY shall retain an Architect-Engineer for design and to prepare construction documents for the Project. The Architect-Engineer's services, duties and responsibilities are described in the agreement between the CITY and the Architect-Engineer a copy of which will be furnished to the CM. The agreement between the CITY and the Architect-Engineer shall not be modified without written notification to the CM in a timely manner.

3.4 Site Survey and Reports: - The CITY shall provide for the furnishing for the site of the project all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description.

3.5 Approvals and Easements: - The CITY shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.6 Legal Services: - The CITY shall furnish legal services through the City Attorney as may be necessary for providing the items set forth in Section 3.5 of this Agreement and such auditing services as the City Attorney may find necessary.

3.7 Drawings and Specifications: - The parties agree that the drawings and specifications are work-made-for-hire which are owned and which will continue to be owned, by the CITY. The CM will be furnished a reproducible set of drawings and specifications reasonably necessary and ready for printing.

3.8 Cost of Surveys & Reports: - The services, information, surveys and reports

required by the above Subsections shall be furnished with reasonable promptness in accordance with the approved schedule at the CITY's expense, and the CM shall be entitled to rely upon the accuracy and completeness thereof.

3.9 Project Fault Defects: - If the CITY becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, it shall give prompt written notice thereof to the CM and Architect-Engineer.

3.10 Funding: - The CITY shall furnish in accordance with the established schedule, reasonable evidence satisfactory to the CM that sufficient funds will be available and committed for the cost of each part of the Project. The CM shall not commence any work, unless authorized in writing by the CITY and work that is accomplished without CITY authorization shall not be subject to compensation.

3.11 Lines of Communication: - The CITY and the Architect-Engineer shall communicate with the subcontractors or suppliers only through the CM while such method of communication is effective in maintaining Project schedules and quality.

3.12 Lines of Authority: - The CITY shall establish and maintain lines of authority for its personnel and shall provide this definition to the CM and all other affected parties.

3.13 Permitting & Code Inspections: - The CITY recognizes and coordinates with the Permitting Authority and expects the CM to do the same.

ARTICLE 4 **PERMITTING AND INSPECTION**

Before Project construction can commence, it is necessary by controlling law for the CM to obtain a building permit. In addition, Project construction shall be inspected for code compliance, compliance with drawings and specifications, and quality by inspectors working for the Permitting Authority. The building permitting and code inspection requirements shall be as described in Sections 4.1 through 4.2 hereinafter.

4.1 Building Permits: - The CM shall provide the following information to the Permitting Authority and obtain approval from the Permitting Authority prior to beginning Project construction:

A. Two (2) sets of documents, signed, sealed and dated by the Architect-Engineer, with all addenda enclosed with each set. These documents may be transmitted to the Permitting Authority prior to perfecting and filing the Building Permit Application addressed in 4.1B hereinafter.

B. The completed Building Permit Application Form attached as Exhibit "D".

The above items shall be transmitted to "City of Daytona Beach Shores Department of Community Services, 2990 South Atlantic Avenue, Daytona Beach Shores, Florida

32118".

C. Florida Fire Prevention Code. – The Architect-Engineer and the CITY shall be responsible for any applicable *Florida Fire Prevention Code* permitting necessary for Project construction.

4.2 Code Inspections: - All projects require detailed code compliance inspections during construction in disciplines determined by the Permitting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building.

Inspection personnel will be provided by the Permitting Authority. Names, addresses, and phone numbers of the inspectors shall be provided to the CM by the Permitting Authority.

The CM shall notify the appropriate inspector(s), no less than 24 hours in advance that the work is ready for inspection and before the work is covered up. Work not inspected and approved prior to cover-up shall be uncovered for inspection when directed by the Permitting Authority at the expense of the CM. All costs for uncovering and reconstruction shall be borne by the CM.

All inspections shall be made for conformance with the applicable building codes, compliance with drawings and specifications, and quality.

Costs of any nature arising from the re-inspection of work found defective and subsequently repaired shall be borne by the CM.

ARTICLE 5 **SUBCONTRACTS**

5.1 Additional Definition: - A subcontractor is a person, entity or organization who has a direct contract with the CM to perform any of the Project work or work at the Project site. Nothing contained in the Contract Documents shall create any contractual relation between the CITY or Architect-Engineer and any subcontractor and privity of contract shall be between the CM and the subcontractors.

5.2 Proposals: - Subject to Article 9 of this Agreement and, in accordance with Section 2.3D of this Agreement, the CM shall request and receive proposals from subcontractors and suppliers and will, subject to approval of the CITY, award those contracts to the qualified low bidder after the has CM reviewed each proposal and is satisfied that the subcontractor is qualified to perform the work and accomplish the work in a timely manner for the Project in adherence to the critical construction paths associated with the Project.

5.3 Required Subcontractors' Qualifications and Subcontract Conditions:

5.3.1 Subcontractual Relations: - By an appropriate and binding written agreement in conformity with controlling law and this Agreement, the CM shall require each subcontractor to the extent of the Project work to be performed by the subcontractor, to be bound to the CM by the terms of the Contract Documents, and to assume toward the CM all the obligations and responsibilities which the CM by these Documents, assumes toward the CITY and the Architect-Engineer. Said subcontractor agreements shall fully preserve and protect the rights of the CITY and the Architect-Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor such that the subcontracting of the Project work thereof will not prejudice such rights. In all appropriate cases, the CM shall require each subcontractor to enter into similar agreements with its sub-subcontractors.

The CM shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor shall be bound by this Section 5.3, specifically, and this Agreement, generally, and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents to the extent such variance is authorized in this Agreement. Each subcontractor shall similarly make copies of such documents available to its sub-subcontractors.

5.3.2 Subcontract Requirements:

A. Bonding - On all subcontracts where the bid exceeds \$100,000, the CM may require subcontractors to provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Insurance. The CM may waive bonding requirements for subcontractors, however, if such a waiver is granted the CM shall be at risk for any work performed under that waiver.

B. Experience Questionnaire - On all subcontracts where the bid exceeds \$200,000.00, each subcontractor must submit a completed experience questionnaire and financial statement form supplied by CM. The subcontractor's financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.

C. Workforce - The subcontractor must agree to perform no less than 15% of the Project construction work utilizing its own employees.

D. Subcontractor experience - The subcontractor must have successfully completed no less than 2 projects of similar size and complexity within the last 10 years.

E. Terms And Conditions Of Subcontracts - All subcontracts shall provide:

(1). That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its' control including, but not limited to, delays claimed to be caused by the CITY or the Architect-Engineer or attributable to the CITY

or Architect-Engineer shall be an extension of its' contract time. In the event of a change in the work the subcontractor's claim for adjustments in the contract sum are limited exclusively to its' actual costs for such changes plus no more than 15% for overhead and profit and bond costs. Each subcontract shall require the subcontractor to expressly agree that the foregoing constitute the sole and exclusive remedies for delays and changes in the Project work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation.

(2). Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to the CM within the time and in the manner in which the CM must submit such claims to the CITY, and that failure to comply with the conditions for giving notice and submitting claims shall result in the non-rebuttable and irrefutable waiver of all and any of such claims.

5.4 Responsibilities for Acts and Omissions: - The CM shall be responsible to the CITY for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract (of whatever type or nature) with the CM.

5.5 Subcontracts to be Provided: The CM shall make available, for review by the CITY or the Architect-Engineer when requested, a copy of each subcontract including, but not limited to, the general supplementary conditions; provided that any such review and any approval of any nature shall not result in either the CITY or the Architect-Engineer incurring any responsibility or liability therefore or thereunder.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

6.1 Timely Completion Required: At the time a GMP is established, as provided for in Article 7 of this Agreement, a Project substantial completion date, a Project final completion date and a CITY occupancy date for completion of the Project in accordance with the master project schedule, shall also be established by the Construction Team. The CM shall complete the construction of the Project in accordance with the agreed upon substantial completion date, final completion date and CITY occupancy date as may be adjusted from time-to-time by change order. The CM acknowledges that failure to complete the project within the construction time set forth in the approved schedule for the Project may result in substantial damages to the CITY, for all of which damages the CM shall be liable. Owing to the difficulty of computing and calculating the damages due to the City for a delay in occupancy of the Community Center, the sum of \$500.00 per day is hereby established as liquidated damages to reasonably cover any cost incurred by the CITY due to failure of the CM to complete the Project work in accordance with the Project schedule as it may be amended from time-to-time by written change order. Time is of the essence in the performance of all contract obligations of the CM as set forth in this Agreement.

6.2 Date of Occupancy: The date of CITY occupancy shall occur as described in

Article 2.3L of this Agreement. Warranties called for by this Agreement or by the drawings and specifications shall commence on the Date of Substantial Completion of the project.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 *GMP Process:* When the design development documents are sufficiently complete, as determined by the Construction Team, to establish the scope of work for the Project or any portion thereof, as generally defined by a design document listing to be provided by the Architect-Engineer and the CM upon execution of this Agreement, which is to be used only as a guide in developing the specifications and plan data necessary to establish a GMP, or at such time thereafter designated by the CITY, the CM shall establish and submit in writing to the CITY for its approval a GMP, guaranteeing the maximum price to the CITY, for the plenary construction costs of the Project or designated part thereof. The GMP proposal shall include the following sections:

Section One: Summary of the Work.

Section Two: GMP Price Summary (including Construction Authorization and Tax Savings).

Section Three: Scope clarifications and assumptions.

Section Four: Detailed Estimate.

Section Five: Bid Tabulations and Recommendations.

Section Six: Construction Schedule.

Section Seven: Contract Documents – Drawing List and Specification List.

Such GMP may be subject to modification for changes in the Project as provided in Article 10 of this Agreement. However, the actual price paid for the work by the CITY shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined under Article 9 of this Agreement, plus the CM's fees or the GMP, whichever is less when the work is complete.

7.2 *Taxes:* The GMP will only include those taxes in the cost of the Project which are legally enacted at the time the GMP is established.

7.3 *Contingency Funding:* When the Project reaches 50% completion, the construction contingency within the GMP may, by mutual agreement of the CM and the CITY, be reduced by 25%. When the Project reaches 75% completion, the construction contingency within the GMP may, by mutual agreement of the CM and the CITY, be reduced by 50%. At substantial completion of the Project, the construction contingency within the GMP may, by mutual agreement of the CM and the CITY, be reduced by the remaining 25%. A secondary or “buyout” contingency shall be established utilizing savings accrued during buyout of bid packages to be utilized by the CM. Upon 100% buyout, the buyout contingency be rolled into the construction contingency. A full

accounting of the buyout contingency shall be provided to the CITY. When substantial completion is reached the CM, through change order, shall return any and all unused contingency monies.

If the CM receives bids for portions of the Project work which are less than the amounts budgeted in the GMP proposal approved by the CITY for such portions of the Project work, such buyout savings shall first be utilized to offset shortfalls on other bid packages. If, after offsetting any shortfalls, buyout savings remain, all buyout savings shall be returned to the CITY by means of a “no cost” change order.

7.4 *Time Schedules:* At the time of submission of a GMP, the CM shall verify the time schedule for activities and work which were adopted by the Construction Team and used to determine the CM's cost of work. In addition to the cost of work, the GMP shall include an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to the CM's plenary responsibilities for the construction of the Project. The CM shall furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the CITY. Documentation for use of the contingency, or any part of a contingency, shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. The Architect-Engineer shall verify the actual costs. If bids are received below the applicable line items in the GMP, the surplus shall be added to the contingency.

If bids are received above the applicable line item in the GMP the deficiency shall be taken from the construction contingency; provided, however, that, any such event shall not be cause to increase the GMP.

If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the CM reserves the right to perform that portion of the work as acknowledged by the CITY or negotiate for its performance for the specified line item lump sum amount or less. No portion of the Project work may be performed by the CM or its affiliates except with the CITY's approval in accordance with CITY's policies on the subject in effect at the time the CM commences construction. The CM shall award trade contracts representing 90% of the cost of the Project work or more.

The City may, at its sole discretion and based upon its sole judgment:

- (i) indicate its acceptance of a GMP proposal;
- (ii) reject a GMP proposal;
- (iii) terminate the Project; or
- (iv) proceed to construct the Project using a party or parties other than the CM.

ARTICLE 8 **CM'S FEE**

8.1 *Compensation:* In consideration of the performance of the contract, the CITY

agrees to pay the CM as compensation for its services, fees as set forth in Subsections 8.1.1, 8.1.2 and 8.1.3.

8.1.1 Preconstruction Phase Fee: - For the performance of the services set forth under Section 2.1 and 2.2 and for profit and overhead related to these services, a total fee of **\$ 53,400**. The preconstruction phase fee shall be paid after each phase is completed and verified by the Architect.

During the pre-construction phase costs for printing shall be billed at actual cost and shall be reimbursed to the CM and shall be in addition to the pre-construction phase fee as directed in this Section.

The CM's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit "C".

8.1.2 Construction Phase Fee: - Prior to commencement of the construction phase and subject to the approval of the GMP and by the CITY, the CITY may direct the CM in writing to proceed into the construction phase of the Project. The CM's compensation for work or services performed during the construction phase shall be a fee of 4.5% of cost of the work included in each GMP proposal (however, the CITY retains the right to review the need and effectiveness of any employee or employees assigned by the CM, should the Project Director or the Architect-Engineer question the need for the employee or employees). The first monthly payment shall become due 30 days following the issuance of the first Construction Authorization by the Project Director and the final monthly payment shall be paid only when construction of the Project is finally completed and occupancy of the Project accepted by the CITY. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the CITY. Retainage shall not be held on construction phase fee.

A. Adjustments in Fee. - For changes in the Project as provided in Article 10 of this Agreement, the construction phase fee shall be adjusted as follows:

(1). The CM shall be paid an additional fee subject to negotiation if the CM is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the CM.

(2). Should the duration of the construction stipulated herein for final completion extend beyond six (6) months after the notice-to-proceed, receipt of final drawings and specifications, or receipt of all necessary permits, whichever is later, due to no fault of the CM, the CM's additional construction phase fee shall be \$500.00 per working day, for each day or portion thereof. The CM's staff during such time extensions shall be that shown in Exhibit "C".

(3). The CM shall not be due any additional overhead and profit on increases in the GMP that do not exceed \$50,000.00. Should the GMP be increased by more than \$50,000.00 under the terms of Article 10 of this Agreement due to no fault of the CM, the CM's additional profit for the construction phase will be 4.5% of that portion of the accumulative increases in the GMP that exceed the GMP by more than \$50,000.00 exclusive of deductive CITY purchase orders.

B. CM's Exclusive Remedy.: In the event the construction substantial or final completion date is extended, the CM's sole and exclusive remedy is an extension of the construction completion date and payment of additional construction phase fees and overhead and profit for construction phase as provided above.

C. Costs and Expenses Included in Fee. - The following are included in the CM's fee for services during the construction phase:

(1). Salaries or other compensation of the CM's employees at his principal office and branch offices. The CM's personnel to be assigned during the construction phase, their duties and responsibilities to the Project and the duration of their assignments are set forth on Exhibit "C".

(2). General operating expenses related to the Project of the CM's principal and branch offices.

(3). The costs of all data processing staff.

(4). Salaries or other compensation of the CM's employees at the Project site. The CM's personnel to be assigned to the Project site during the construction phase under the job site management and supervision fee, their duties and responsibilities and the duration of their assignment are shown on Exhibit "C".

(5). General operating expenses incurred in the management and supervision of the Project, except as expressly included in Article 9 of this Agreement.

(6). Those services set forth in Section 2.3I (1) of this Agreement.

(7). Job office supplies - includes paper, pencils, paper clips, file folders, staples, etc., and janitorial supplies (blue print paper not included).

(8). Direct tax saving purchase program.

8.1.3 Overhead And Profit For Construction Phase. - For overhead, profit and general expenses of any kind, except as may be expressly included in Article 9 of this Agreement, for services provided during and related to the construction phase, the fee shall be included in each GMP proposal and shall be paid proportionally to the ratio of

the cost of the work in place, and less retainage (see Section 12.1 of this Agreement), as it bears on the latest estimate of the total construction cost or to the GMP or to the CITY's construction budget, whichever is less. The balance of the fee shall be paid when construction of the Project is finally completed and occupancy of the Project accepted by the CITY. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the CITY. The CM's exclusive remedy for any adjustments in the overhead and profit for construction phase fee is provided in Section 8.1.2A of this Agreement.

ARTICLE 9 **COST OF THE PROJECT**

9.1 Additional Definition: - The term Cost of the Project means costs necessarily incurred in the Project during the construction phase for construction services and paid by the CM which are not included in Article 8 of this Agreement. Such costs shall include the items set forth below in this Article.

The CITY agrees to pay the CM for the cost of the project as defined in this Article. Such payment shall be in addition to the CM's fees as provided in Article 8 of this Agreement.

9.2 Direct Cost Items:

A. Wages paid for labor (as opposed to wages paid to management or supervisory personnel) in the direct employ of the CM in the performance of its work under this Agreement, times a multiple of 42.48% to cover fringe benefits.

B. Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.

C. Payments due to subcontractors from the CM or made by the CM to subcontractors for their work performed pursuant to contract under this Agreement.

D. Costs including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Project work, costs on such items used, but not consumed, which may be turned over to the CITY at the end of the Project and cost less salvage value on such items used but not consumed which remain the property of the CM. For those items to be turned over to the CITY at the end of the Project, Article 2.2F of this Agreement shall apply.

E. Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the CM or other, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a subcontractor or the CM's own forces in the performance of the work, at rental charges

consistent with those prevailing in the area.

F. Cost of the premiums for all insurance and cost of premiums for all bonds which the CM is required to procure by this Agreement specifically for the construction project. This includes any subcontractor bonds the CM deems appropriate.

G. Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the CM is liable.

H. The cost of corrective work subject, however, to the GMP and except for any corrective work made necessary because of defective workmanship or other causes contributed to by the CM or its subcontractors or suppliers.

No costs shall be paid by the CITY to the CM for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the plans and specifications or to correct any deficiency or damage caused by acts by the CM or the subcontractors.

I. Minor expenses at the site, such as telegrams, long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.

J. Costs for trash and debris control and removal from the site all of which shall be implemented in accordance with the codes, ordinances and franchises of the CITY.

K. Cost incurred due to an emergency affecting the safety of persons and property.

L. Legal costs reasonably and properly resulting from prosecution of the Project for the CITY, including handling claims for changes by subcontractors and vendors, subject to the following limitations:

(1). The CITY approved incurring such costs in advance, which approval shall not be unreasonably denied; and

(2). The legal costs were not incurred as result of the CM's fault or default.

(3). At a rate not in excess of the rate paid by the CITY for its legal services.

This Section does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by CM itself, for change orders or in enforcing the obligations of this Agreement that are the obligations of the CM.

M. All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the CM's fees as set forth in Article 8 of this Agreement.

N. If requested by the CITY, the CM shall perform all or a portion of any item in Article 9

of this Agreement for the cost of the Project work.

O. If approved by the CITY, the CM, when qualified, may perform all or a portion of the Project work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the Project work.

P. Transportation greater than 100 miles from the Project site for those personnel employed directly for the Project, but which travel does not represent commuting time or distance. Such transportation must be approved in advance by the CITY, and may be in accordance with the CM's standard personnel policy, but not exceeding the limits established by Section 112.061, *Florida Statutes*, or CITY policy, whichever is less.

Q. Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project.

R. Costs for watchman and security services for the Project.

S. Costs for efficient logistical control of the Project site, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space.

T. Costs for such temporary facilities during construction, as approved by the CITY, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.

U. Costs for any job site items not referenced herein, not normally provided by the subcontractors, which shall be provided by the CM as required to complete the Project work.

ARTICLE 10
CHANGES IN THE PROJECT

10.1 Change Orders: - The CITY, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, the GMP, and the construction completion Date, being adjusted accordingly as set forth in this Agreement. All changes in the Project not covered by an authorized contingency shall be authorized by change order issued by the CITY before the change is implemented.

10.1.1 Additional Definition: A Change Order is a written order to the CM issued by the CITY after the execution of this Agreement, authorizing a change in the Project, the CM's fee, or the construction completion date. Each adjustment in the GMP resulting from a change order shall clearly separate the amount attributable to the cost of the Project.

10.1.2 Calculation Of Change To GMP: The increase or decrease in GMP resulting from a change in the Project shall be determined in one or more of the following ways:

A. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and the CITY;

B. by unit prices stated in this Agreement or subsequently agreed upon;

C. by cost as defined in Article 9 of this Agreement and a mutually acceptable fixed or percentage fee.

10.1.3 Unit Pricing Changes: If unit prices are stated in this Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed change order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to the CITY or the CM, the applicable unit prices and GMP shall be equitably adjusted.

10.1.4 Concealed Conditions: Should concealed conditions encountered in the performance of the Project work that arise from below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the drawings, specifications, or CITY furnished information of a material nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the GMP and the construction completion date may be equitably adjusted by change order upon a request for change order in accordance with Section 10.2 of this Agreement.

10.2 Claims for Additional Cost or Time:

All claims for additional cost or time shall be made by the CM by means of a request for a change order.

If the CM is delayed at any time in the progress of the Project work by any neglect or wrongful act of the CITY or the Architect-Engineer acting on behalf of the CITY or by any separate CM employed, if any, by the CITY or by any changes ordered in the Project work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the CM's control or by delay authorized by the CITY pending resolution of disputes, and such delay substantially extends the completion date, the substantial completion shall be extended by change order for such reasonable time as the Construction Team may determine.

Only delays which are determined to extend the critical path for the schedule for constructing the Project will result in a potential time extension. Neither the CITY nor the CM shall be considered to own the schedule float time.

10.3 Minor Changes In The Project:

The Architect-Engineer shall have authority to authorize minor changes in the Project not involving an adjustment in the GMP or an extension of the construction completion date and not inconsistent with the intent of the drawings and specifications. Such minor changes shall be effected by written order. Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. Changes shall be subject to approval only by the Project Director and the Architect-Engineer.

10.4 Emergencies:

In any emergency affecting the safety of persons or property, the CM shall act at its reasonable discretion to prevent threatened damage, injury or loss. Any increase in the GMP or extension of time claimed by the CM on account of emergency work shall be determined as provided in Article 10 of this Agreement.

ARTICLE 11 **DISCOUNTS AND PENALTIES**

11.1 Discounts: All discounts for prompt payment shall accrue to the CITY to the extent the Cost of the project is paid directly by the CITY or from a fund made available by the CITY to the CM for such payments. To the extent the cost of the Project is paid with funds of the CM, all cash discounts shall accrue to the CM. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the cost of the Project.

11.2 Penalties: All penalties incurred due to fault of the CM for late payment of a cost of the Project shall be paid by the CM.

ARTICLE 12

PAYMENTS TO THE CM

12.1 Monthly Statements: - The CM shall submit to the CITY a statement, sworn to if required by the CITY, along with the cost reports required under this Agreement, showing in detail all monies paid out to include satisfactory payments to subcontractors, cost accumulated or costs incurred on account of the cost of the Project during the previous period and the amount of the CM's fees due as provided in Article 8 of this Agreement. Retainage in the amount of 10% shall be held on all payments, exclusive of the CM's fee, until this Agreement and the Project is substantially complete. When approved by the CITY, subcontractor work that is completed early in the Project may have their retainage reduced to 5%. At substantial completion, the CITY may approve a reduction of the retainage from 10% to 5% at its discretion. The CM's pre-construction phase fee, construction phase fee and overhead and profit shall be shown as separate line items on the schedule of contract values. Payment of the CM's overhead and profit shall be calculated based on the construction budget balance or the GMP balance whichever is applicable. The construction budget balance or GMP balance is established by subtracting the pre-construction phase fee, construction phase fee and overhead and profit from the latest estimate of the total construction cost or to the GMP or to the CITY's construction budget, whichever is less. The billable overhead and profit is calculated by multiplying the percent complete of the construction budget balance or the GMP balance as applicable. This data shall be attached to the partial pay request form in a form approved by the CITY. Provided that the approved application for payment is received by the CITY not later than the end day of the month, the CITY shall make payment to the CM not later than the 15th day of the following month or in accordance with controlling law, whichever date first occurs. If an approved application for payment is received by the CITY after the application date fixed above, payment shall be made by the CITY in accordance with controlling law.

12.2 Final Payment: - Final payment constituting the unpaid balance of the cost of the Project and the CM's fee, shall be due and payable after the CITY, at a regularly scheduled Board meeting, has accepted occupancy of the Project, provided that the Project be then finally completed, that the CM has verified by its signature that it has completed all items specified in the Contract Documents and as required in this Agreement, and that this Agreement has been finally performed. However, if there should remain work to be completed, the CM and the Architect-Engineer shall list those items prior to receiving final payment and the CITY may retain a sum equal to 200% of the estimated cost of completing any unfinished work and portion of the CM's retainage, provided that the unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, the CITY shall pay to the CM, on a monthly basis, the amount retained for each incomplete item after each of said items is completed.

12.3 Payments to Subcontractors: - The CM shall promptly, within 7 days after receipt

of payment from the CITY, pay all the amount due subcontractors less a retainage of ten percent (10%) until the project is substantially complete, and based on CM's evaluation of the subcontractor's acceptable performance, the CITY may approve a reduction in retainage from 10% to 5% thereafter. If there should remain items to be completed, the CM and the Architect- Engineer shall list those items required for completion and the CM shall require the retainage of a sum equal to 200% of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items likewise listed separately. Thereafter, the CM shall pay to the subcontractors monthly the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the CITY's operating and maintenance personnel is complete.

Final payment, including retainage, may be made to certain subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon written approval of the CITY. All final completion documentation as indicated in Section 2.3J(9) of this Agreement must be completed for the subcontractor.

12.4 Delayed Payments by CITY: - If the CITY should fail to pay the CM within 30 days after the receipt of an approvable payment request from the CM, then the CM may, upon 7 additional days written notice to the CITY and the Architect-Engineer stop the Project until payment of the Amount owing has been received.

12.5 Payments for Materials and Equipment: - Payments shall be made for material and equipment not incorporated in the Project work, but delivered and suitably stored at the Project site or another approved location, subject to prior approval and acceptance by the CITY on each occasion.

12.6 Withholding Payments To Subcontractors: - The CM shall not withhold payments to subcontractors if such payments have been made to the CM. Should this occur for any reason, the CM shall immediately return such monies to the CITYs, adjusting pay requests and project bookkeeping as required.

ARTICLE 13 **INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION**

13.1 Indemnity:

A. The CM agrees to indemnify and hold the CITY harmless from all claims for bodily injury and property damage (other than the work itself and other property insured under this Agreement) that may arise from the CM's operations and acts under this Agreement.

13.2 CM's Insurance:

A. Condition Of Commencing Work. - The CM shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the CITY, nor shall the CM allow any subcontractor to commence work on its subcontract until all similar required insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida.

B. Worker's Compensation Insurance. - The CM shall procure and maintain in effect during the life of this Agreement Worker's Compensation Insurance for all its employees connected with the work of the Project and, in case any work is sublet, the CM shall require each and every subcontractor to, similarly, provide Worker's Compensation Insurance for all of the subcontractor's employees unless such employees are covered by the protection afforded by the CM. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this Agreement at the Project site is not protected under the Worker's Compensation laws, the CM shall provide adequate insurance, satisfactory to the CITY, for the protection of employees not otherwise protected.

C. CM's Public Liability and Property Damage Insurance.-The CM shall procure and maintain during the life of this Agreement Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect it and the CITY from and against any and all claims for damage for personal injury including, but not limited to, accidental death, as well as any and all claims for property damages which may arise from operating under this Agreement whether such operations are by itself or by anyone directly or indirectly employed by it, and the amount of such insurance shall be minimum limits as follows:

(1). CM's Comprehensive General Liability Coverages Damage Bodily Injury & Property:

\$1,000,000 Each Occurrence (Combined Single Limit).
\$100,000 Fire Damage (any one fire).
\$5,000 Medical Payments (any one person).
\$1,000,000 Personal and Advertising Injury.
\$2,000,000 General Aggregate.
\$2,000,000 Products-Comp/ Completed Operations Aggregate.

(2). Automobile Liability Coverages:

\$1,000,000 Each Occurrence (Combined Single Limit), Bodily Injury and Property Damage.

(3) Excess Liability, Umbrella Form:

\$5,000,000 Each Occurrence (Combined Single Limit).

The insurance policy clause for both Bodily Injury and Property Damage Insurance shall be amended to provide coverage on an occurrence basis.

D. Subcontractor's Public Liability and Property Damage Insurance. - The CM shall require each of its subcontractors to procure and maintain during the life of this Agreement, insurance of the type specified above or insure the activities of the subcontractors in its policy, as specified above.

E. CITY's and CM's Protective Liability Insurance - The CM shall procure as a cost of the Project and furnish an CITY's and CM's Protective Liability Insurance Policy with the following minimum limits:

Bodily Injury Liability and Property Damage Liability: \$5,000,000 Each Occurrence (Combined Single Limit)

F. "XCU" (Explosion, Collapse, Underground Damage) Coverage. - The CM's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.

G. Broad Form Property Damage Coverage, Products & Completed Operations Coverages. -The CM's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.

H. Contractual Liability Work Contracts. - The CM's Liability Policy shall include Contractual Liability Coverage designed to protect the CM for contractual liabilities assumed by the CM in the performance of this Agreement.

I. Indemnification Rider.

(1). With the goal of covering the CITY from liability to the fullest extent permitted by law, the CM shall indemnify and hold harmless the CITY and the Architect-Engineer and their officials, officers, agents and employees from and against all claims, damages, losses and expenses including, but not limited to, attorney's fees and other associated defense or assertion costs, arising out of or resulting from the performance of the Project Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project Work itself) including, but not limited to, the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission of the CM, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Agreement.

(2). In any and all claims against the CITY or the Architect-Engineer or any of their officials, officers, agents or employees by any employee of the CM, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CM or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

(3). The obligations of the CM under this Article shall not extend to the liability of the Architect-Engineer, its agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by the Architect-Engineer, its agents or employees providing such giving or failure to give is the primary cause of the injury or damage.

(3). The CM hereby acknowledges receipt of \$10.00 and other good and valuable consideration from the CITY and acknowledges receipt of \$10.00 and other good and valuable consideration from the Architect-Engineer in exchange for giving the CITY and Architect-Engineer, respectively, the indemnification provided herein.

J. Certificate of Insurance - The CITY shall be furnished proof of coverage of Insurance as follows:

Certificate of Insurance form shall be furnished to the CITY along with the Contract Documents. These shall be completed and signed by the authorized Florida Resident Agent, and returned to the CITY. This Certificate shall be dated and show:

(1). The name of the insured CM, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.

(2). Statement that the Insurer shall mail notice to the CITY and a copy to the Architect-Engineer at least 15 days prior to any material changes in provisions or cancellation of the policy.

(3). Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverages required in this Section.

(4). Certificate of Insurance shall state that the CITY is listed as additional insured on all appropriate policies.

(5). Copy of the endorsement or additional insured rider to the General Liability Policy.

13.3 Waiver of Subrogation:

13.3.1 *Mutual:* The CITY and the CM waive all rights against each other, for damages caused by perils covered by insurance provided under Section 13.2 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the CITY and CM as trustees. The CM shall require similar waivers from all subcontractors and their sub-subcontractors.

13.3.2 *Equipment:* The CITY and CM waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The CM shall require similar waivers from all subcontractors and their sub-subcontractors.

13.3.3 *Waiver:* The CITY waives subrogation against the CM on all property and consequential loss policies carried by the CITY on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

13.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, then the CM will notify the CITY of such policies and will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14 TERMINATION OF AGREEMENT AND CITY'S RIGHT TO PERFORM CM'S OBLIGATION

14.1 *Termination by the CM:* - If the Project is stopped for a period of 30 days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the CM, or if the Project should be stopped for a period of 60 days by the CM, for the CITY's failure to make payments thereon, then the CM may, upon 7 days written notice to the CITY, terminate this Agreement and request payment for all work executed, the CM's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the CM.

14.2 *CITY's Right to Perform CM's Obligations and Termination by CITY for Cause:*

A. If the CM fails to perform any of its obligations under this Agreement including any obligation he assumes to perform work with its own forces, the CITY may, after 7 days written notice during which period the CM fails to commence correction of such obligation, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the CITY of making good such deficiencies and the CM's construction phase fee shall be reduced by an amount required to manage the making good of such deficiencies.

B. If the CM is adjudged a bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 14 days or more behind schedule) which has been adopted by the Construction Team, or if it fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of this Agreement, then the CITY may, without prejudice to any right or remedy and after giving the CM and its surety, if any, 7 days written notice, during which period CM fails to commence correction of the violation, terminate the employment of the CM and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CM, and may finish the Project by whatever method it may deem expedient. In such case, the CM shall not be entitled to receive any further payment until the Project is finished nor shall it be relieved from its obligations assumed under any provision of this Agreement. Reasonable terminal expenses incurred by the CITY may be deducted from any payments left owing the CM (excluding monies owed the CM for subcontract work).

C. The CITY is not required to engage in a series of notices and opportunities to cure for repetitive or recurring breaches of an obligation by the CM.

14.3 Termination by CITY Without Cause:

A. If the CITY terminates this Agreement other than pursuant to Article 14.2B or Article 14.2C, it shall reimburse the CM for any unpaid cost of the Project due it under Article 9, plus that part of the unpaid balance of the construction phase fee in an amount as will increase the payment on account of its fee to a sum which bears the same ratio to the construction phase fee as the cost of the Project at the time of termination bears to the GMP, if established, otherwise to the CITY's construction budget. The CITY shall also pay to the CM fair compensation, either by purchase or rental at the election of the CITY, for any equipment retained. In the event of such termination of this Agreement, the CITY shall further assume and become liable for obligations, commitments and unsettled contractual claims that the CM has previously undertaken or incurred in good faith in connection with said Project. The CM shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the CITY may require for the purpose of fully vesting in it the rights and benefits of the CM under such obligations or commitments.

B. After the establishment of the GMP or at the completion of the preconstruction phase, if the final cost estimates or lack of funding make the Project no longer feasible from the standpoint of the CITY, the CITY may terminate this Agreement and pay the CM its proportionate fee due in accordance with Section 8.1 plus any costs incurred pursuant to Articles 9 and 10. In no event shall any obligation of the CITY under this

Agreement be or constitute a general obligation or indebtedness of the CITY or the State of Florida and shall be subject to availability of funds to the CITY from governmental sources and shall only be payable solely from legally available revenues and fund and shall not impose a duty upon the CITY to impose ad valorem taxation in any way.

ARTICLE 15
ASSIGNMENT AND GOVERNING LAW

15.1 *Assignment:* Neither the CITY nor the CM shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

15.2 *Governing Law:* This Agreement shall be governed by the Laws of the State of Florida. Venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida. This Agreement is the result of bona fide arm's length negotiations between the CITY and the CM and all parties have contributed substantially and materially to the preparation of this Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one party than against any other party.

ARTICLE 16
NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY

16.1 *Limitations Of Claims:* The CITY's liability to CM for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the CITY of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:

A. All claims must be submitted as a request for change order in the manner as provided herein;

B. The CM must submit a notice of claim to CITY and to the Architect-Engineer within 20 days of when the CM was or should have been aware of the occurrence of the event giving rise to the claim; and

C. Within 20 days of submitting its notice of claim, the CM shall submit to the CITY its request for change order, which shall include a written statement of all details of the claim, including a description of the Project work affected.

The CM agrees that the CITY shall not be liable for any claim that the CM fails to submit as a request for change order as provided herein.

16.2 *CM's Own Forces:* For work the CM performs with its own forces, and in addition to the adjustments provided for in Article 8, the CM's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the CITY or the Architect-Engineer, shall be a claim submitted in compliance with the requirements of this Agreement, for an extension of the scheduled construction time. In the event of a change in such work, the

CM's claims for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus 10% for profit. The CM expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

ARTICLE 17 **MISCELLANEOUS**

17.1 Harmony: - CM is advised and hereby agrees that it shall exert every reasonable and diligent effort to assure that all labor employed by CM and its subcontractors for work on the project shall work in harmony with and be compatible with all other labor being used by building and CMs now or hereafter on the site of the project.

CM further agrees that this provision shall be included in all subcontracts of the Subcontractors as well as the CM's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the *Florida Constitution*.

17.2 Apprentices: - If the CM employs apprentices on the project, the behavior of the CM and the CITY shall be governed by the provisions of Chapter 446, *Florida Statutes*, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The CM shall include a provision similar to the foregoing sentence in each subcontract.

17.3 Invoices: - Invoices shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Invoices shall be governed by the terms and conditions of this Agreement.

17.4 CM's Project Records: - The CM's project records shall be maintained as prescribed hereinabove in accordance with the State of Florida General Records Schedule applicable for local governments and shall be made available to the CITY or its authorized representative at mutually convenient times.

The CM shall maintain books, records, documents, time and costs accounts and other evidence directly related to its provision or performance of services under this Agreement. All-time records and cost data shall be maintained in accordance with generally accepted accounting principles. Upon termination of this Agreement, the CM shall deliver all records, data, memoranda, models, and equipment of any nature that are in the CM's possession or under the CM's control and that are the CITY's property or relate to the CITY's business.

The CM shall maintain and allow access to the records required under this Section for a

minimum period of 5 years after the completion of the provision or performance services under this Agreement and date of final payment for said services, or date of termination of this Agreement.

The CITY may perform, or cause to have performed, an audit of the records of the CM before or after final payment to support final payment issued hereunder. This audit shall be performed at a time mutually agreeable to the CM and the CITY subsequent to the close of the final fiscal period in which services are provided or performed. Total compensation to the CM may be determined subsequent to an audit as provided for in this Section, and the total compensation so determined shall be used to calculate final payment to the CM's conduct of the audit shall not delay final payment as required by this Section.

In addition to the above, if Federal, State, County, or other entity funds are used for any services under this Agreement, the Comptroller General of the United States or the Chief Financial Officer of the State of Florida, or a county or municipality with jurisdiction or any representatives, shall have access to any books, documents, papers, and records of the CM which are directly pertinent to services provided or performed under this Agreement for purposes of making audit, examination, excerpts, and transcriptions.

In the event of any audit or inspection conducted reveals any overpayment by the CITY under the terms of this Agreement, the CM shall refund such overpayment to the CITY within 30 days of notice by the CITY of the request for the refund.

The CM agrees to fully comply with all State laws relating to public records. In order to comply with Section 119.0701, *Florida Statutes*, the CM must: (1) Keep and maintain public records required by the CITY to perform the service, (2) Upon request from the CITY's custodian of public records, provide the public with a copy of the public records requested or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, or as otherwise provided by law, (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if the CM does not transfer the records to the public City, (4) Upon completion of this Agreement, 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 of this Agreement, the CM shall 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 completion of this Agreement, the CM shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the City, and (5). If the CM does not comply with a public records request, the CITY shall enforce any and all Agreement provisions in accordance with this Agreement and

the CM shall be subject to all rights and remedies of the CITY and the public under controlling State law.

A request to inspect or copy public records relating to this Agreement must be made directly to the CITY. If the CITY does not possess the requested records, the CITY shall immediately notify the CM of the request, and the CM must provide the records to the CITY or allow the records to be inspected or copied within a reasonable time. Failure by the CM to grant such public access and comply with public records requests shall be grounds for immediate unilateral cancellation of this Agreement by the CITY. The CM shall promptly provide the CITY with a copy of any request to inspect or copy public records in possession of the CM and shall promptly provide the CITY with a copy of the CM's response to each such request.

The CM agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

IF THE CONTRACTOR (CM) HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONTRACTOR'S (CM'S) DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (386) 763-5353, CSCHWAB@CITYOFDBS.ORG, 2990 SOUTH ATLANTIC AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118.

17.5 Public Entity Crime Information Statement: - "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 on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a CM, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, *Florida Statutes*, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list."

17.6 Discrimination; Denial Or Revocation For The Right To Transact Business With Public Entities: - An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity. The CM agrees that it shall not discriminate against any employee or

applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or their forms or compensation; and selection for training, including apprenticeship. The CM, moreover, shall comply with all the requirements as imposed by the *Americans with Disability Act*, the regulations of the Federal government issued thereunder, and any and all requirements of Federal or State law related thereto. The CM shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement or violate any laws pertaining to civil rights, equal protection or discrimination.

17.7 Unauthorized Aliens: - The CITY will not intentionally award publicly-funded contracts to any CM who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in Title 8, *United States Code*, Section 1324a(e) Section 274A(e) of the *Immigration and Nationality Act (INA)*. The CITY shall consider the employment by the CM of unauthorized aliens, a violation of Section 274A(e) of the *INA*. Such violation by the CM of the employment provisions contained in Section 274A(e) of the *INA* shall be grounds for immediate termination of this Agreement by the CITY.

17.8 Electronic Mail Capabilities: - The CM must have electronic mail capabilities through the World Wide Web. It is the intention of the CITY of to use electronic communication for all projects whenever possible. The CM shall provide their electronic mail address and the name of a contact person responsible for their electronic communications.

17.9 Contract Blanks: - The parties acknowledge there are blank spaces in this Agreement that apply to portions of the work that must occur after establishment of the GMP.

17.10 Removed.

17.11 Additional Standards Of Conduct:

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

The CM hereby certifies that no undisclosed (in writing) conflict of interest exists with respect to this Agreement, including, but not limited to, any conflicts that may be due to

representation of other clients, customers or vendees, other contractual relationships of the CM, or any interest in property that the CM may have. The CM further certifies that any conflict of interest that arises during the term of this Agreement shall be immediately disclosed in writing to the CITY. Violation of this Section shall be considered as justification for immediate termination of this Agreement.

The CM shall ensure that all taxes due from the CM are paid in a timely and complete manner including, but not limited to, the local business tax.

If the CITY determines that any employee or representative of the CM is not satisfactorily performing its assigned duties or is demonstrating improper conduct pursuant to any assignment or work performed under this Agreement, the CITY shall so notify the CM, in writing. The CM shall immediately remove such employee or representative of the CM from such assignment. This provision includes, but is not limited to, acts of sexual harassment or of a similar nature.

The CM shall not publish any documents or release information regarding this Agreement to the media without prior approval of the CITY.

The CM shall certify, upon request by the CITY, that the CM maintains a drug free workplace policy in accordance with Section 287.0878, *Florida Statutes*. Failure to submit this certification may result in termination of this Agreement.

The CM agrees to comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the services provided to the CITY. The CM agrees that any program or initiative involving the work that could adversely affect any personnel involved, citizens, residents, users, neighbors or the surrounding environment will ensure compliance with any and all employment safety, environmental and health laws.

The CM shall ensure that all services are provided to the CITY after the CM has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents.

If applicable, in accordance with Section 216.347, *Florida Statutes*, the CM shall not use funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or State agency.

The CM shall advise the CITY in writing of it who has been placed on a discriminatory vendor list, may not submit a bid on a contract to provide goods or services to a public entity, or may not transact business with any public entity.

The CM shall not engage in any action that would create a conflict of interest in the performance of that actions of any CITY employee or other person during the course of performance of, or otherwise related to, this Agreement or which would violate or cause

others to violate the provisions of Part III, Chapter 112, *Florida Statutes*, relating to ethics in government.

17.12 Exhibits:

Each exhibit referred and attached to or attached to this Agreement, without reference, is an essential part of this Agreement. The exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

17.13 Captions:

The Section headings and captions of this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any provision of this Agreement.

17.14 Severability/Construction:

If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest. All provisions of this Agreement shall be read and applied in para materia with all other provisions hereof.

17.15 Alternative Dispute Resolution (ADR):

In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust any alternative dispute resolution procedures reasonably imposed by the CITY prior to filing suit or otherwise pursuing legal remedies. The CM agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration to the CITY in alternative dispute resolution procedures or which the CM had knowledge and failed to present during the CITY procedures. In the event that CITY procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

17.16: *Counterparts:*

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

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

ATTEST:

CITY OF DAYTONA BEACH SHORES

By: _____
Cheri Schwab
City Clerk
Dated: _____

By: _____
Harry Jennings
Mayor

By: _____
Michael Booker
City Manager

Approved as to form
and correctness:

Lonnie N. Groot
City Attorney

ATTEST:

A. M. WEIGEL CONSTRUCTION, INC.

By: _____
Dwight Pickett
Vice President

By: _____
A. Michael Weigel,
President/Secretary/Treasurer

Dated: _____

EXHIBIT "A"
CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

CITY:

City of Daytona Beach Shores

ARCHITECT-ENGINEER:

Project Manager

Design Lead

Landscape Architect

Cost Estimating

CIVIL 3D Coordinator

CONSULTANTS:

Project Architect

MEP/Fire Protection

CM:

A. Michael Weigel – Project Executive/Senior Project Manager

Dwight Pickett – Director of Field Operations

Colin Seale - Project Manager

Jim Collins - Project Superintendent

Todd Donlick – Risk/Safety Manager

Patti Corbett - Cost Accounting

EXHIBIT "B"
CITY'S PROJECT BUDGET

ITEM DESCRIPTION

CONSTRUCTION BUDGET

CM'S PRECONSTRUCTION PHASE FEE	\$	
REIMBURSABLE FOR REPRODUCTION/TRAVEL NOT TO EXCEED.....	\$	
CM'S CONSTRUCTION PHASE FEE	\$	TBD
CM'S OVERHEAD & PROFIT.....	\$	TBD
CONSTRUCTION BUDGET BALANCE...	\$	TBD
DESIGN FEES	\$	TBD
DEMOLITION DOCS / CASTALDI REPORT.....	\$	TBD
TESTING/PERMITS/SURVEY.....	\$	TBD
FURNITURE, FIXTURES, EQUIPMENT	\$	TBD
CITY'S CONTINGENCY	\$	TBD

TOTAL PROJECT BUDGET:\$

EXHIBIT "C"
CMS'S PERSONNEL

<u>Individual</u>		Duration	Percentage of Time	Percentage of Time
Dwight Pickett	Vice President		As Req'd	As Req'd
	Sr. Project Manager		As Req'd	As Req'd
Colin Seale	Project Manager		As Req'd	As Req'd
Jim Collins	Superintendent		100	
Todd Donlick	Accounting		As Req'd	As Req'd
	Financial/Payroll		As Req'd	As Req'd
	Asst. Project Manager		As Req'd	As Req'd
	Asst. Project Manager		As Req'd	As Req'd
	Sr. Estimator		As Req'd	As Req'd
	Estimator		As Req'd	As Req'd
	Estimator		As Req'd	As Req'd

Council comments

Audience remarks

Items for the next agenda