



March 18, 2013

MEMORANDUM

TO: District Board of Trustees
FROM: Jim Murdaugh, President 
SUBJECT: Construction Manager Agreement

Item Description

This item requests that the Board approve the form of Agreement between TCC and Childers Construction Co. for the upcoming Science Lab renovation project.

Overview and Background

On February 20, 2012 the District Board of Trustees approved a recommended list of construction managers for projects with a construction value of less than \$1,000,000 each. As a separate agenda item this date, the Physical Plant, Facilities Planning & Construction Department requests a renewal of the list for the second of three years.

The Department has evaluated the fee structures of the listed construction managers, and recommends that an Agreement be executed with Childers Construction Co. for the next project planned to be constructed by the College. The Science Lab renovation project will be constructed in two phases. The construction budget for the first phase is \$250,000 and the construction budget for the second phase is approximately \$500,000. The total project budget, including fees and equipment which must be purchased separately, is \$1,000,000.

The Agreement is similar to the form used by TCC in the past, and has been updated to reflect current changes in Florida Statutes and practice. The Agreement has been reviewed by the College Attorney. Agreements with additional construction managers will be brought to the Board in the future as additional projects are developed.

Past Actions by the Board

The Board approved similar Agreements with Cook Brothers, Inc. and Allstate Construction, Inc. on April 16, 2012.

Funding/Financial Implications

Funds for the project are anticipated to be provided by the Foundation for Tallahassee Community College.

Staff Resource

Teresa Smith

Recommended Action

Approve the attached Agreement between the District Board of Trustees of Tallahassee Community College and Construction Manager for Certain Projects.

**AGREEMENT BETWEEN THE DISTRICT BOARD OF
TRUSTEES OF TALLAHASSEE COMMUNITY COLLEGE
AND CONSTRUCTION MANAGER FOR CERTAIN PROJECTS**

THIS AGREEMENT made this _____ day of _____, 2013, between The District Board of Trustees of Tallahassee Community College (hereinafter called "TCC") and **Childers Construction Co.** (hereinafter called the Construction Manager").

Whereas, the primary intent of this Agreement is to obtain construction management services for projects related to TCC.

Whereas, the parties understand that the construction and projects contemplated under this Agreement shall be specified on an individual basis, and a separate Purchase Order and Project Description shall be provided for each project. This Agreement is intended to outline the general terms and conditions of the parties' duties related to the future construction and projects.

To carry out the intent of this Agreement, TCC and the Construction Manager agree as set forth below:

ARTICLE 1

Definitions

- 1.1 Terms used in this Agreement shall have the following meanings:
 - 1.1.1 "Contract Documents" means this Agreement and all other documents relevant to the services, projects, and construction addressed in this Agreement.
 - 1.1.2 "Trade Contractor" means any contractor or subcontractor providing construction and/or services related to the projects herein. "Trade Contractor" and "Subcontractor" shall be used interchangeably.

ARTICLE 2

The Construction Team and Extent of Agreement

- 2.1 The Construction Manager agrees to furnish its best skill and judgment and to cooperate with the Architect/Engineer and TCC's representatives, where applicable, in furthering the interests of TCC and meeting its obligations under this Agreement. The Construction Manager agrees to furnish efficient business administration, management, and superintendence and to use its best efforts to complete the Projects to which it is assigned in an expeditious, competent, and economical manner consistent with the interests of TCC.

- 2.2 The Construction Team: The Construction Manager, TCC, TCC's representative, and the Architect/Engineer (collectively the "Construction Team") will work as a team through the commencement of Construction Manager's services and construction completion. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design.
- 2.3 Extent of the Agreement: This Agreement is complementary to the Drawings and Specifications, Project Manuals, Purchase Orders, and any future specific agreements between the parties, and together with them, represents the entire agreement between TCC and the Construction Manager and supersedes all prior negotiations, representations or agreements. If this Agreement conflicts with the Drawings and Specifications, Project Manuals, Purchase Orders, or any other future agreements between the parties, this Agreement shall control unless expressly provided for otherwise in a writing signed by both parties. Where this Agreement is silent, the requirements of the Drawings and Specifications, Project Manual and purchase orders will prevail. This Agreement may be amended only by written instrument signed by TCC and the Construction Manager.

ARTICLE 3

Construction Manager's Services

- 3.1 The Construction Manager's Basic Services under this Agreement include construction and management services for certain Projects which cost \$0 - \$1,000,000 each (Projects"). Each specific Project will be described in a Purchase Order pursuant to the terms of this Agreement. The Purchase Order shall be considered part of the Contract Documents and incorporated into this Agreement. The Construction Manager will submit a guaranteed maximum price proposal for each Project. Should TCC and Construction Manager not reach an agreement (which would be confirmed by a Purchase Order) on the Project, TCC reserves the right to cease negotiations for that Project and perform the work by other means, including but not limited to employing a different construction manager, without affecting this Agreement or any other Project.
- 3.2 The Construction Manager shall cooperate closely with the Architect/Engineer, TCC, TCC's representative, and the building code inspector and shall be responsible for the successful completion of the Projects.

- 3.3 Unless otherwise authorized by TCC, all Work shall be performed under Trade Contracts held by the Construction Manager. The Construction Manager may not bid any of the Trade Contractor Work or perform such Work with its own forces or employees unless it obtains prior written consent of TCC. The Construction Manager shall:
- 3.3.1 Provide preliminary evaluation of the Project and Project budget requirements, each in terms of the other. Assist TCC and the Architect/Engineer in achieving mutually agreed upon Project and Project budget requirements and other design parameters. Provide cost evaluations of alternative materials and systems.
- 3.3.2 Review all design documents for constructability and compliance with applicable laws, rules, codes, design standards, and ordinances. Prior to bid, without assuming the responsibilities of the Architect/Engineer, the Construction Manager shall bring to TCC's attention any Work or construction items necessary to deliver to TCC an operational and complete Project.
- 3.3.3 Advise about site use and improvements, selection of materials, building systems, and equipment and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurements, installation and construction, and factors related to cost.
- 3.3.4 Provide for a Project Schedule that coordinates and integrates the Construction Manager's services, the Architect/Engineer's services, and TCC's responsibilities with anticipated construction schedules.
- 3.3.5 Coordinate the documents related to Construction Manager's services, consult with TCC and the Architect/Engineer regarding Drawings and Specifications, and recommend alternative solutions whenever design details affect construction feasibility, cost, or schedules.
- 3.3.6 Develop a Project Construction Schedule providing all major elements such as phasing of construction and times of commencement and completion required of each Trade Contractor or subcontractor. Provide the Project Construction Schedule for each set of bidding documents. Continually update cost estimates and make recommendations to keep each Project within the budget.
- 3.3.7 Administer the construction as provided herein and in accordance with any further terms and/or conditions that might apply. Unless otherwise provided for in this Agreement or in the Purchase Order for each individual Project, the Work and Construction Manager's services hereunder will comply with the following: the current edition of AIA Document A201, General Conditions

and Supplementary General Conditions; and the document forms and Special Conditions contained in the Project Manual for each Project.

- 3.3.8 For each Project, ensure that the Work is commenced within 10 days after receipt of the executed Purchase Order and Notice to Proceed from TCC.
- 3.3.9 Develop Trade Contractor interest in the Project and conduct pre-bid conferences with interested bidders to review the relevant documents. Take competitive bids on the Work of the various Trade Contractors. The Construction Manager may require bidders to submit bid bonds or other bid security acceptable to the Construction Manager as a prerequisite to bidding on the Work. Analyze and evaluate the results of the various bids and their relationship to budgeted and estimated amounts, and prepare for review with TCC and Architect/Engineer a bid tabulation analysis and such other support data as necessary to properly compare the various bids and their responsiveness to the designated scope of Work. Specifically, review the scope of Work in detail with apparent low and best bidders and attempt to achieve additional savings through negotiation whenever practical. Maintain records of all pre-award interviews with apparent low bidders. Prepare and submit written recommendations to TCC and Architect/Engineer for award of Trade Contracts by the Construction Manager identifying the Minority Business Enterprises to be utilized. Promptly award and execute Trade Contracts with Trade Constructors that are approved by TCC. Provide copies of fully executed Trade Contracts, insurance certificates, and bonds to TCC
- 3.3.10 Manage, schedule and coordinate the Work, including the Work of the Trade Contractors, in conformity with this Agreement and the activities and responsibilities of TCC, Architect/Engineer and Construction Manager in order to complete each Project in accordance with TCC's objectives of cost, time and quality. Develop and maintain a program, acceptable to TCC and Architect/Engineer, to assure quality control of the construction. Supervise the Work of all subcontractors, providing instructions to each when its Work does not conform to the requirements of the plans and specifications and continue to manage each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should disagreement occur between the Construction Manager and the Architect/Engineer over acceptability of Work and conformance with the requirements of the specifications and plans, TCC shall be the final judge of performance and acceptability.
- 3.3.11 Maintain exclusively for each Project the level of staff at the Project site necessary to coordinate, manage, and direct the Work and progress of the Trade Contractors on the Project. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with that provided in Construction Manager's response to the Request for Proposals,

consistent with the industry standards within the construction industry, and shall not be removed or replaced without TCC's consent which shall not be unreasonably withheld. TCC shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to TCC. In such event, the Construction Manager shall promptly replace such personnel, without consideration of additional compensation for the replacement.

- 3.3.12 Establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team. Identify an on-site staff member to represent the Construction Manager, on a daily basis, with authority to negotiate Change Orders and contract modifications on behalf of the Construction Manager. Make available such executive personnel as necessary to execute Change Orders or other contract modifications on behalf of the Construction Manager so as not to delay the progress of the Work.
- 3.3.13 Establish procedures for coordination among TCC, Architect/Engineer, Trade Contractors and Construction Manager with respect to all aspects of the Work. Implement such procedures, incorporate them into a project resource manual, and distribute manuals to the Construction Team.
- 3.3.14 Provide contract administration and recommend approval of payments; monitor and record the construction progress; review and approve as-builts and maintenance and warranty manuals from all subcontractors; and keep a daily log of all site visits and observations.
- 3.3.15 Require of the various Trade Contractors such drawings and specifications as may be necessary to properly coordinate the Work among the Trade Contractors.
- 3.3.16 In coordination with the Architect/Engineer, establish and Implement procedures for the efficient processing and disbursement of shop drawings and samples, as reasonably required to perform the Work and construction contemplated herein.
- 3.3.17 Consider TCC's Minority Business Enterprise ("MBE") requirements when developing bid packages. TCC has established a goal of 30% MBE participation on each Project and the Construction Manager shall encourage and utilize minority enterprises in the performance of the services described in each project, if warranted. The award of subcontracts or trade contracts should include the full diversity of the citizens of the State of Florida, if warranted
- 3.3.18 Schedule and conduct weekly progress meetings with Trade Contractors to review such matters as job procedures, construction progress, schedules,

shop drawing status and other information as necessary. Provide prior notice to TCC and Architect/Engineer of all such meetings, and prepare and distribute minutes of such meetings. Attend periodic Team meetings scheduled by the Architect/Engineer and/or TCC.

- 3.3.19 Review each Project schedule with the various Trade Contractors. Regularly monitor and update each Project schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. Provide summary reports of the Work progress and document all changes in each schedule. Regular schedule updates and reports shall be included as part of the monthly project report outlined in Subparagraph 3.3.32 herein. Provide TCC with each Project schedule and discuss the schedule at progress meetings.
- 3.3.20 Determine the adequacy of the Trade Contractors' personnel and equipment, and the availability of materials and supplies to meet each Project schedule. In consultation with TCC and the Architect/Engineer, take necessary corrective actions when requirements of a Trade Contract or a Project schedule are not being met.
- 3.3.21 Whenever TCC-Furnished Contractor-Installed (TFCI) materials or equipment are shipped to the Project site, the Construction Manager shall notify TCC and shall be responsible for their acceptance, proper storage, and incorporation into the Work, provided the scope of the TCC-Furnished Contractor-Installed (TFCI) work is included within the Guaranteed Maximum Price.
 - 3.3.21.1 TCC may elect to purchase materials and equipment included in any Trade contractor's bid for a portion of the Work directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment are referred to herein as "Direct Purchase Materials". At the time the Construction Manager provides TCC with the bid tabulation analysis as required by this Agreement (which bids shall include the cost of all potential Direct Purchase Materials, freight charges FOB project site, and sales taxes applicable thereto), the Construction Manager shall submit to TCC a list, prepared by applicable Trade Contractors, of materials and equipment appropriate for consideration by TCC as direct Purchase Materials.
 - 3.3.21.2 If TCC elects to purchase any Direct Purchase Materials, it shall so notify the Construction Manager and the construction Manager shall thereafter promptly furnish to the TCC, at least seven (7) days prior to the date such Direct Purchase Materials must be ordered, a purchase order request reflecting the approved Direct Purchase Materials, together with acceptable

evidence that the Construction Manager competitively bid for the portion of the Work which includes the Direct Purchase Materials. Acceptable evidence means, at a minimum, that the Construction Manager performed all advertising required by this Agreement, utilized pre-qualification criteria approved by TCC and obtained written, sealed quotes from at least (3) bidders for the applicable portions for the Work; or provide a written explanation if any of the above criteria is not met. In addition, the Construction Manager shall reduce the applicable Trade Contractor's subcontract amount by the cost of the Direct Purchase Materials and sales tax related thereto.

- 3.3.21.3 Upon TCC's receipt of the purchase order request and supporting materials, TCC will review the same and, if approved, issue a purchase order directly to the supplier of the applicable Direct Purchase Material, with delivery F.O.B. Project site. Upon delivery of the Direct Purchase Materials to the Project site, the Construction Manager shall ensure that the Direct Purchase Materials are as requested in TCC's purchase order. The Construction Manager shall immediately document receipt of the materials and the content of the shipment and shall forward all paperwork including Receiving Reports, Bills of Lading, Packing Slips, Invoices and associated back-up documentation to TCC. Upon receipt of the properly prepared invoice from the supplier, TCC will process the invoices and issue payment directly to the applicable supplier.
- 3.3.21.4 Upon issuance of a purchase order to the material supplier, the Construction Manager shall develop an Owner's Contingency budget within the Schedule of Values. Use of these funds will be at the sole discretion of TCC and may, at the direction of TCC, be incorporated into a deductive change to the Guaranteed Maximum Price.
- 3.3.21.5 ~~At no additional cost to TCC and as required by the Agreement, the construction Manager shall continue builder's risk insurance on the Direct Purchase Materials, naming TCC as the insured or an additional insured. TCC shall reimburse the Construction Manager for the cost of such insurance as provided by the Agreement. _____ Init. _____ Init.~~
- 3.3.21.6 Except to the extent modified by this section, the Construction Manager shall be responsible for satisfying all of its other obligations with respect to the Direct Purchase Materials pursuant to this Agreement, as if the direct Purchase Materials had been purchased by it. There shall be no additional charge to TCC for services provided pursuant to this section.
- 3.3.24 The Construction Manager shall develop and maintain an effective system of Project cost control which is satisfactory to TCC. Revise and refine the initially approved Project construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed.

Identify variances between actual and budgeted or estimated costs and advise TCC and Architect/Engineer whenever projected costs exceed budgets or estimates. Cost Control reports shall be included as part of the monthly report outlined in Subparagraph 3.3.32 herein.

- 3.3.25 The Construction Manager shall maintain a system of accounting consistent with generally accepted accounting principles. The Construction Manager shall preserve all accounting records for a period of four (4) years after final acceptance of the Work. TCC shall have access to all such accounting records at any time during the performance of the Work and for a period of four (4) years after final acceptance of the Work.
- 3.3.26 Without assuming any of the Architect/Engineer's responsibilities for design, recommend necessary or desirable changes to TCC and the Architect/Engineer, review requests for changes, and submit recommendations for changes to TCC and Architect/Engineer.
- 3.3.27 When requested by TCC or Architect/Engineer, promptly prepare and submit estimates of probable cost for changes proposed in the Work, including similar estimates from the Trade Contractors. If directed by TCC, promptly secure formal written Change Order Proposals from such Trade Contractors.
- 3.3.28 Be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the Trade Contractors. The OSHA guidelines shall serve as the basis for the construction safety programs.
- 3.3.29 Promptly notify TCC, in writing, upon receiving notice of filing of any charge of non-compliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the Project site.
- 3.3.30 At progress meetings with Trade Contractors, conduct a review of job safety and accident prevention, and prepare minutes of such meetings that will be available to TCC's representative on request.
- 3.3.31 Make provisions for Project security acceptable to TCC, to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents, etc., as required by job and location conditions. Mobile equipment and operable equipment at the site, and hazardous parts of new construction subject to mischief, shall be locked or otherwise made inoperable or protected when unattended.
- 3.3.32 Record the progress of the Project. Submit written monthly progress reports to TCC and the Architect/Engineer including information on the Trade Contractors' Work, the percentage of completion, current estimating, computerized updated monthly Critical Path Method scheduling and project accounting reports, including Estimated Time to Completion and Estimated

Cost to Complete. Keep a daily log of activities and the status of each Project available to TCC and the Architect/Engineer. Report and record such additional information related to construction as may be requested by TCC.

- 3.3.33 Schedule and coordinate all inspections and tests required by the specifications and the Building Code Inspector.
- 3.3.34 Ensure that all subcontractors are keeping as-builts up to date. TCC shall have the right to view as-builts at anytime. As-builts shall be maintained at the job site.
- 3.3.35 Ensure and document correction of non-conforming and substandard work, in conjunction with TCC's representative.
- 3.3.36 Schedule and coordinate test and balance, substantial completion, building commissioning, and occupancy inspections.
- 3.3.37 Coordinate the delivery of instructions for operating all building systems, including training of maintenance staff of TCC.
- 3.3.38 Prepare final project accounting and provide written evaluation of the Architect/Engineer and major subcontractors.
- 3.3.39 Provide a minimum one-year warranty on all parts and labor. Other warranties as specified.
- 3.3.40 Ensure timely completion of warranty work during the warranty period.
- 3.3.41 Schedule warranty inspections and ensure timely completion of required work generated by the inspections.
- 3.3.42 Assist in the transfer of the Project to TCC, including the delivery of as-builts, warranties, guaranties, and operating instructions.
- 3.3.43 The Construction Manager shall be responsible for the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, any asbestos or asbestos-related products as may be required in connection with the Work. Hazardous materials, as described by federal guidelines, brought to the site by the Construction Manager or the Trade Contractors, shall remain their responsibility for proper disposal. Any hazardous material not specifically shown on the documents shall be considered a concealed condition and may be the responsibility of the Construction Manager in a Change Order increasing the Guaranteed Maximum Price for any additional costs incurred.

- 3.3.44 The Construction Manager shall be responsible for securing an NPDES permit from the Florida Department to Environmental Protection, if applicable. The construction Manager shall maintain a clean site, limiting exposure of litter and hazardous materials to stormwater, and shall be responsible for erosion control and stormwater sediment. The Construction Manager is responsible for any penalties or fines incurred due to improper maintenance of permit documentation or of the site.

ARTICLE 4

TCC's Responsibilities

- 4.1 TCC shall designate a representative to act on its behalf. This representative, or his/her designee, will monitor the progress of the Work, serve as liaison with the Construction Manager and the Architect/Engineer, receive and process communications and paperwork, and represent TCC in the day-to-day conduct of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee or any changes thereto.
- 4.2 TCC may retain an independent inspector to evaluate and advise as to the Construction Manager's services, the Work, the construction, and whether all applicable laws and regulations are being met. Such inspector shall not interfere or prevent the performance of the Work or construction.

ARTICLE 5

Schedule

- 5.1 The number of days for performance of the Work shall be established as part of the GMP and reflected in the Purchase Order Amendment for each Project
- 5.2 In the event TCC desires to accelerate the schedule for any portion of the Work, TCC shall notify the Construction Manager in writing. Within seven (7) days, the Construction Manager shall give TCC a revised Guaranteed Maximum Price for the acceleration which shall become a Change Order upon acceptance. TCC may then direct the Construction Manager to increase its staff and require its Trade Contractors to increase their manpower, or to work such overtime hours as may be necessary to accomplish the required acceleration in accordance with the approved Change Order. In such event, TCC shall reimburse the Construction Manager for the costs of such acceleration subject to the Guaranteed Maximum Price. In no event shall the Construction Manager be entitled to compensation in excess of the adjusted Guaranteed Maximum Price. The

Construction Manager shall require accurate daily records of all costs of the required acceleration and shall provide such records to TCC.

- 5.3 TCC shall have the right to occupy, or use, any portion of the Work or area that is completed ahead of schedule. If use or occupancy ahead of schedule affects the Cost of the Work or the schedule for the Work, the use or occupancy will be treated as a change in the Work in accordance with Article 10, herein.

ARTICLE 6

Guaranteed Maximum Price

- 6.1 The "Guaranteed Maximum Price" ("GMP") includes Cost of the Work required by the Contract Documents for each Project, the Construction Manager's Fee as defined in Article 7 herein, and the Construction Contingency as defined in Article 9 herein. The GMP will be established according to the formula herein and based on the Contract Documents for each Project. The GMP is subject to modification as allowed in this Agreement or for changes in the Work as provided in Article 10 herein. An acceptable detailed cost breakdown containing all costs that makeup the GMP shall be given to TCC prior to a purchase order being given.
- 6.2 The GMP will only include those taxes in the Cost of the Work which are legally enacted at the time the GMP is established. The anticipated tax savings under the Direct Material Purchase program shall be listed as a line item on the GMP.
- 6.3 All cost savings for the not-to-exceed value of the GMP shall be returned to TCC as part of the net aggregate savings established when final accounting is submitted upon final completion of the Work. "Cost savings" are the net difference obtained by deducting from the adjusted or final GMP, the Construction Manager's Fee, the expended portions of the Construction Manager's contingency and the actual expenditures representing the Cost of the Work as defined in Article 8 herein. Liquidated damages, if any, are different from and are not a part of, this calculation.
- 6.4 By execution of this Agreement, the Construction Manager certifies that all factual unit costs supporting the fees specified in this Agreement are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished TCC in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Agreement and any additional fees that may be authorized in the future shall be adjusted to exclude any significant sums

which TCC determines was due to inaccurate, incomplete, or non-current factual unit costs.

- 6.5 Adjustments to the GMP will be made as permitted by this Agreement or future Contract Documents.
- 6.6 In no event will TCC be obligated to pay the Construction Manager more than the adjusted or final GMP.

ARTICLE 7

Payments to Construction Manager

- 7.1 In consideration of the performance of the Agreement, TCC agrees to pay the Construction Manager, as compensation for its services, as follows:
 - 7.1.1 Upon acceptance of the GMP, which includes the Construction Manager's Fee, the Cost of the Work, and the Construction Contingency, payment will be made monthly according to the following procedure. No later than the fifth (5th) of every month after the Purchase Order has been executed, the Construction Manager shall furnish copies of all invoices and evidence of expenditures related to the Work and construction, including, but not limited to, those related to the Trade Contractors, subcontractors, services, fees, and equipment. At the time of the furnishing of such invoices and evidence of expenditures, the Construction Manager shall also furnish an itemized statement for all expenditures during the period for which it seeks payment from TCC. The itemized statement shall provide the following in an easily understandable format: (1) the total payment sought for that period; and (2) a brief description and amount for each of the services, goods, and/or expenses for which payment is sought for that period. Within thirty (30) days of receipt of the properly submitted documents from the Construction Manager, TCC shall make payment to the Construction Manager pursuant to the terms of this Agreement and the Contract Documents.
 - 7.1.2 Within seven working days from receipt of payment from TCC, the Construction Manager shall pay each Trade Contractor and/or subcontractor out of the amount paid to the Construction Manager on account of such Trade Contractor's and/or subcontractor's Work, the amount to which said Trade Contractor and/or subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Construction Manager on account of said Trade Contractor's and/or subcontractor's Work. The Construction Manager shall, by appropriate agreement with each Trade Contractor and/or subcontractor, require each Trade Contractor and/or subcontractor to make payments to its subcontractors in a similar manner.

- 7.1.3 As provided by Section 215.422, Florida Statutes, if a warrant in payment of an invoice is not mailed by TCC within 40 days after receipt of the invoice and receipt, inspection and approval of the services, TCC shall pay to the Construction Manager, in addition to the amount of the invoice, interest at the rate established in the Florida Statutes, on the unpaid balance from the expiration of such 40-day period until such time as the warrant is mailed to the Construction Manager. These provisions apply only to undisputed amounts for which payment has been authorized. Invoices or pay requests returned to the Construction Manager due to preparation errors will result in a payment delay. Payment requirements do not start until the documents required in this Article (Article 7) are properly submitted to TCC. A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 488-2924 or by calling the State Comptroller's Hotline, (800) 848-3792.
- 7.2 The Construction Manager's fee for each project under this agreement shall be 6.95%. Included in the Construction Manager's Fee is the following:
- 7.2.1 The cost of its home or branch office employees or consultants not at the Project site, including the cost of all pension contributions, hospitalizations, bonuses, vacations, medical insurance assessments or taxes for such items as unemployment compensation and social security, payroll insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees.
- 7.2.2 General operating expenses of the Construction Manager's principal and branch offices other than the field office at the Project site.
- 7.2.3 Any part of the Construction Managers' capital expenses, including interest on the Construction Manager's capital employed for the Work.
- 7.2.4 Overhead and profit, or general expenses of any kind, except as may be expressly included in Article 8 herein, as Cost of the Work.
- 7.2.5 All travel and per diem costs of Construction Manager's employees and consultants.
- 7.2.6 The cost of estimating services which may be required during the construction phase in locations other than the Project site.
- 7.2.7 Minor expenses such as telegrams, long distance telephone calls, postage, office supplies, expressage, and similar items in connection with the Work.

- 7.2.8 All other expenses or costs associated in any way with the Work or construction contemplated in this Agreement, other than those provided for in Article 8 herein, as Cost of the Work.
- 7.3 Adjustments in the fee will be made as follows:
 - 7.3.1 Where otherwise allowed by this Agreement.
 - 7.3.2 For approved changes as evidenced by properly executed Change Orders.
 - 7.3.3 For delays in the Work caused solely by TCC, the Construction Manager shall be entitled to an additional fee to compensate the Construction Manager for its increased expenses. The amount of this increased fee shall be equal to the amount of the increased reasonable expenses as properly and timely submitted by the Construction Manager.

ARTICLE 8

Cost of the Work

- 8.1 The term "Cost of the Work" shall mean costs incurred in the Work as described and defined in Paragraph 8.2, below, and paid or incurred by the Construction Manager less any reimbursement for scrap value and discounts, subject to Article 11, herein. The term "wages" used herein shall include the straight time and overtime pay and the cost of associated employee benefits. Employee benefits include, but are not limited to, unemployment compensation, social security, compensated absences, and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaries, or other remuneration paid to employees of the Construction Manager.
- 8.2 TCC agrees to pay the Construction Manager for the Cost of the Work as defined in Article 8, herein, through completion of the Work. Such payment shall be in addition to the Construction Manager's Fee as stipulated in Article 7, herein.
- 8.3 Cost of the Work for each Project includes and is limited to actual expenditure for the following cost items:
 - 8.3.1 Subject to prior approval by TCC, wages paid for labor in the direct employ of the Construction Manager other than those provided under Article 7, herein, as part of the Construction Manager's Fee, in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by TCC and Construction Manager, and including

such welfare or other benefits, if any, as may be payable with respect thereto.

- 8.3.2 The cost of all materials, supplies and equipment incorporated in the Work or stored on site, including cost of transportation and storage thereof shall be included in the Cost of Work.
- 8.3.3 Payments made by the Construction Manager to Trade Contractors for their Work performed pursuant to Trade Contracts with the Construction Manager.
- 8.3.4 Cost of the premiums for all insurance or bonds including Trade Contractor bonds which the Construction Manager is required to procure by this Agreement, or other insurance or bonds subsequently deemed necessary by the Construction Manager, and agreed upon by TCC.
- 8.3.5 Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the Construction Manager is liable.
- 8.3.6 Building and operating permit fees, inspection and filing fees, sewer and water fees, and deposits lost for causes other than the Construction Manager's own negligence. If royalties or losses and damages, including cost of defense, are incurred which arise from a particular design, process or the product of a particular manufacturer or manufacturers specified by TCC or Architect/Engineer, and the Construction Manager had no reason to believe there would be infringement of patent rights, such royalties, losses and damages shall be paid by TCC and the GMP shall be adjusted by Change Order to compensate the Construction Manager for the increased costs. If the Construction Manager has actual knowledge that use of the particular design, process or product would infringe a patent(s) and fails to provide written notice to TCC before using such design, process or product, then no royalties, losses or damages arising from use of such design, process or product shall be a Cost of the Work
- 8.3.7 Cost of removal and disposal of all debris including clean-up and trash removal.
- 8.3.8 Cost incurred due to an emergency affecting the safety of persons and/or property.
- 8.3.9 Legal costs reasonably, and properly, resulting from prosecution of the Work for TCC provided, however, that they are not the result of the Construction Manager's own negligence or malfeasance. Legal costs incurred in connection with disputes solely between the Construction Manager and TCC or incurred in connection with disputes solely between the Construction Manager and Trade Contractors are the responsibility of the Construction Manager and shall not be included in the Cost of the Work.

- 8.3.10 Cost to the Construction Manager of temporary electric power, lighting, water and heat required for the performance of the Work, or required to protect the Work from weather damage.
- 8.3.11 Cost to the Construction Manager of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary project signs and costs of permits and fees necessary for the Work and construction contemplated by this Agreement.
- 8.3.12 Cost of watchmen or similar security services.
- 8.3.13 Cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Agreement.
- 8.3.14 Cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in Trade Contracts.
- 8.3.15 Cost of data processing services required in the performance of the services as outlined in this Agreement.
- 8.3.16 All costs for reproduction of documents required or produced in connection with this project.
- 8.3.17 All costs directly incurred in the performance of the Work and not included in the Construction Manager's Fee set forth in Article 7, herein.
- 8.3.18 Cost of deductibles for insurance claims.
- 8.3.19 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen which are employed or consumed in the performance of the Work.
- 8.3.20 Rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the Construction Manager or others, including installation repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof.
- 8.3.21 Costs associated with setting up and demobilizing tool sheds, Project field offices, temporary fences, temporary roads, and temporary fire protection.
- 8.3.22 The cost of its field employees, herein, or their approved replacements, including the cost of all pensions, contributions, hospitalization, bonuses,

vacations, medical insurance, assessments or taxes for such items as unemployment compensation and social security, payroll insurance, and taxes attributable to wages and salaries for said field employees (Labor Burden). The Labor Burden must be reviewed and approved by TCC before the commencement of the project and preparation of the GMP.

8.3.23 Cost of equipment such as typewriters, cameras, radios, telephone service at the site, computers, pagers, copiers, facsimile equipment, dictating units, trailers, vehicles and furniture purchased or rented by the Construction Manager, subject to approval by TCC.

8.3.24 All costs associated with the bidding of the work to Trade contractors, including advertising and document reproduction, whether these costs are incurred prior to or after the execution of a GMP Amendment to this Agreement.

ARTICLE 9

Construction Contingency

9.1 The GMP will include an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to the construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by TCC. Documentation for use of the contingency shall be determined by the Construction Team. The Architect/Engineer shall verify the actual costs. Expenditures charged to the contingency shall have a signed authorization by TCC's representative prior to the expenditure being made. No funds shall be expended from the contingency fund without the written consent of TCC's representative. Such authorization shall not be unreasonably withheld. Remaining unused funds shall be credited in the final invoice to TCC.

ARTICLE 10

Changes in the Work

10.1 TCC, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement consisting of additions, deletions, or other revisions. All changes in the Work shall be authorized by TCC and identified by a Change Order which shall describe all changes, additions, deletions, and/or revisions of the Work and the corresponding changes in the Cost of the Work and Construction Manager's Fee. Except in cases of emergency endangering life or property, the Construction Manager shall allow no Changes in the Work without the prior written approval of TCC.

ARTICLE 11

Discounts

- 11.1 All quantity discounts shall accrue to TCC. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall be credited to TCC.

ARTICLE 12

Insurance

- 12.1 At its own expense, Construction Manager shall obtain for itself and its personnel before providing any services, and will maintain the following insurance coverage throughout the term of this Agreement. Construction Manager shall name TCC as an additional insured on each insurance policy and provide a certificate of insurance evidencing such coverage to TCC upon request.
- 12.2 Comprehensive general liability insurance coverage (including, but not limited to, contractor's commercial liability coverage and automobile liability coverage for any vehicles of Construction Manager) for services, Work, and construction contemplated under this Agreement, for limits not less than \$1 million per occurrence.
- 12.3 Property insurance upon the entire Work at the site for the full insurable replacement value thereof. This insurance shall include the interests of TCC, the Construction Manager, subcontractors, and Trade Contractors. Property damage coverage shall include "all risk" coverage for physical loss or damage to the property, equipment, and items.
- 12.4 Worker's compensation insurance in the statutory coverage amount as required by the laws of the jurisdiction in which the services, Work, and construction are performed.
- 12.5 TCC may unilaterally elect to purchase Builders Risk insurance under a TCC Provided Insurance Program, in which case the Construction Manager will not be required to provide insurance, but will provide coordination with TCC and TCC's insurance administrator, as required.

ARTICLE 13

Indemnity

- 13.1 Construction Manager agrees to indemnify, hold harmless and defend TCC, the State of Florida, its agencies, and all of their respective officers, employees, agents, and representatives from and against all liens, claims, demands, charges, suits, proceedings, causes of action of any type, in law or equity, liabilities, damages, penalties, fines, assessments, losses and expenses, including but not limited to interest, reasonable attorney's fees and costs of suit, to the fullest extent permitted by Florida law, including but not limited to:
- 13.1.1 Construction Manager's failure to comply with the terms of this Agreement.
 - 13.1.2 Any bodily injury death or property damage, as a result of, or related to or connected with the work or construction contemplated under this Agreement
 - 13.1.3 Payment of withholding taxes, social security taxes, benefits (if applicable), unemployment and any other payroll deductions as required by law.
 - 13.1.4 Breach of any warranty.
 - 13.1.5 Failure to comply with the applicable federal, state, and local laws, statutes, ordinances, rules, regulations, codes, orders and/or programs related to the Work and the construction contemplated under this Agreement

ARTICLE 14

Payment and Performance Bond

- 14.1 For projects in excess of \$100,000 the Construction Manager shall secure a Payment and Performance Bond for 100% of the sum, up to the Guaranteed Maximum Price. The surety company issuing the bond must be licensed to do business in Florida and must have a Best Rating of "A." The form of the Payment and Performance Bond shall be consistent with that provided for in A.I.A. Document A-312, latest edition.

ARTICLE 15

Miscellaneous Provisions

- 15.1 **BINDING EFFECT:** TCC and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives of

the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither TCC nor Construction Manager shall assign this Agreement without the written consent of the other.

- 15.2 CONTROLLING LAW AND VENUE: This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit or action related to the breach or non-performance of any provision of this Agreement shall be in a court of competent jurisdiction in Leon County, Florida.
- 15.3 The Construction Manager warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Construction Manager) to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm (other than a bona fide employee working solely for the Construction Manager) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.
- 15.4 As required by Section 287.058, Florida Statutes, this contract may be unilaterally canceled by TCC for refusal by the Construction Manager to allow public access to all documents, papers, letters, or other material subject to the provision of Chapter 119, Florida Statutes, and made or received by the Construction Manager in conjunction with the contract.
- 15.5 The Construction Manager warrants that neither it, nor any supplier, subcontractor, or consultant employed or to be employed in connection with this Project has been on the convicted vendor list for a public entity crime within the past 36 months, as required by Section 287.133, Florida Statutes.
- 15.6 DISCRIMINATION: An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide 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 award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.
- 15.7 STANDARD OF PERFORMANCE: Construction Manager shall provide the services under this Agreement in accordance with generally accepted industry standards of care and competence. Construction Manager hereby warrants that its personnel has the professional qualifications, skill, and competence to carry out the services contemplated in this Agreement.
- 15.8 RELATIONSHIP: The parties to this Agreement agree that the relationship created by this Agreement is that of an independent contractor. Nothing in

this Agreement or any Work Order shall be deemed to create an employment, partnership, agency, or joint venture relationship between the parties, the parties' staff or representatives.

- 15.9 TERM: This Agreement shall be effective for a period of one (1) calendar year from the date of execution of this Agreement. However, TCC shall have the option of extending the term of this Agreement for two (2) additional one (1) calendar year periods. The terms and conditions herein shall apply equally to all extensions. It is hereby agreed that if the each specific sub-project is not "Substantially Complete" or within such further time if any, as in accordance with the provisions of the contract documents should be allowed for such substantial completion, the contractor shall pay to Owner as liquidated damage for such delay, and not as a penalty, \$1,500.00 (One Thousand Five Hundred dollars and no cents) for each and every calendar day elapsing between the date fixed for substantial completion and the date such substantial completion has been fully accomplished. It is also hereby agreed that if each project is not finally completed in accordance with the requirement of the contract documents, the contractor shall pay to the owner as liquidated damages for such delay, and not as a penalty, one-fourth of the rate indicated above.
- 15.10 LICENSURE; COMPLIANCE WITH LAWS AND REGULATIONS: Construction Manager warrants that it is, and will remain during the term of this Agreement, a general contractor licensed in the State of Florida. Construction Manager further warrants that it will require all Trade Contractors and subcontractors to produce sufficient documentation to ensure they are properly licensed to perform the Work and construction contemplated in this Agreement. At all times related to the Work and construction contemplated in this Agreement, the Construction Manager must comply with all local, state and federal laws, rules, regulations and codes, and must require all Trade Contractors and subcontractors to do the same.
- 15.11 PERMITS AND LICENSES: Construction Manager shall obtain or require the Trade Contractors and subcontractors to obtain all necessary permits and licenses for the Work and construction contemplated under this Agreement. TCC is not responsible for obtaining such permits and licenses (unless TCC is the only entity which can obtain such permits and licenses).
- 15.12 NO MINIMUM AMOUNT OF SERVICES: The parties understand and agree that Construction Manager is not guaranteed any amount of fees, payments, or services during the term of this Agreement.
- 15.13 ENTIRE AGREEMENT: This Agreement and any future Work Orders and Contract Documents executed pursuant hereto constitute the entire Agreement of the parties and supersede all prior and contemporaneous agreements and understandings with respect thereto. No other document,

including any agreement between TCC and Construction Manager shall be deemed to modify the terms of this Agreement unless expressly stated in writing to do so and signed by both parties.

15.14 SEVERABILITY: If any provision of this Agreement shall be deemed invalid or unenforceable, it shall be modified to the extent necessary to cure such invalidity or unenforceability, provided, however, that if such modification is not possible without creating a conflict with any other material term or condition of this Agreement, such invalid or unenforceable provision shall be deemed stricken from this Agreement.

15.15 PREVAILING PARTY'S ATTORNEY'S FEES: If any party initiates a lawsuit or cause of action based on this Agreement, the prevailing party shall be entitled to recover all reasonable attorney's fees and costs incurred as a result of said lawsuit or cause of action.

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first written above.

******* CONSTRUCTION MANAGER *******

Witness

By: _____

Witness

Date: _____

*****THE DISTRICT BOARD OF TRUSTEES OF TALLAHASSEE COMMUNITY COLLEGE****

TALLAHASSEE COMMUNITY COLLEGE

Witness

By: _____

Witness

Date: _____