



February 2, 2012		<b>AGENDA ITEM</b>		Item 13
<input type="checkbox"/> Ordinance		<input type="checkbox"/> Resolution		<input checked="" type="checkbox"/> Other
<b>Department:</b> Public Works		<b>File Number:</b> VC-1326386795997-A		
<b>Division:</b> Engineering				
<b>Subject:</b> Contract with Ajax Building Corporation to provide preconstruction services for the branch jail's inmate receiving and booking area improvements.				
<b>Account Number(s):</b> Capital Fund - Intake/Booking Renovation - Construction 309-930-1235-6530 for \$63,141.00				
<b>Total Item Budget:</b> \$63,141.00				
<b>Staff Contact(s):</b> John Angiulli Phone: 386-736-5965 ext. 2207 Gerald N. Brinton, P.E. Phone: 386-736-5967 ext. 2294 Charles Hargrove Phone: 386-736-5950 ext. 5950				
<b>Summary/Highlights:</b> On December 1, 2011, county council awarded and authorized staff to negotiate a contract with Ajax Building Corporation to serve as construction manager/general contractor for improvements to the inmate receiving and booking areas at the branch jail. The construction project is divided into two parts. Part A involves a contract for preconstruction services including coordination with the architect for the design of the improvements, bidding and development of a guaranteed maximum price (GMP). Part B involves a contract for the actual construction phase after a GMP is negotiated based on competitive bids.				
<b>Recommended Motion:</b> Approval.				
John Angiulli, Interim Director Public Works   Pamela Wilsky Director null  No Signature Present	<b>OMB</b>  No Signature Present   Approved as to Budget Requirements	<b>Legal</b>    Approved as to Form and Legality	Approved Agenda Item For:	
<b>Council Action:</b>		<b>Modification:</b>		
<input type="checkbox"/> Approved as Recommended <input type="checkbox"/> Approved With Modifications <input type="checkbox"/> Disapproved <input type="checkbox"/> Continued Date:				

**Summary/Highlights Continued:**

Staff requests approval of the attached contract with Ajax Building Corporation for a lump sum fee of \$63,141 for Part A of the project.



**CONTRACT FOR CONSTRUCTION MANAGEMENT/GENERAL  
CONTRACTING SERVICES FOR PRE CONSTRUCTION PHASE  
SERVICES FOR THE VOLUSIA COUNTY BRANCH JAIL  
RECEIVING AND BOOKING ADDITIONS/RENOVATIONS, PART A**

Between

THE COUNTY OF VOLUSIA

AND

AJAX BUILDING CORPORATION

**Contract No. C-1460  
RQS no. 11-SQ-89DRS**

County of Volusia  
Purchasing and Contracts Division  
123 West Indiana Avenue, Room 302  
Deland, Florida 32720-4608  
[www.volusia.org/purchasing](http://www.volusia.org/purchasing)

**CONTRACT  
FOR CONSTRUCTION MANAGEMENT/GENERAL CONTRACTING SERVICES**

**PRECONSTRUCTION PHASE SERVICES, PART A**

This Contract for Construction Management/General Contracting Services for Preconstruction Phase Services, for the Volusia County Branch Jail Receiving and Booking Additions/Renovations, Part A, by and between the County of Volusia, Florida, a body corporate and politic and a subdivision of the State of Florida, whose address is County of Volusia, 123 West Indiana Avenue, DeLand, Florida 32720 (hereinafter referred to as the "County") and AJAX BUILDING CORPORATION, of 109 Commerce Blvd, Oldsmar, Florida 34677 (hereinafter referred to as the "Construction Manager/General Contractor or "CM/GC").

**RECITALS**

WHEREAS, the County intends to renovate and add facilities to the Volusia County Branch Jail Receiving and Booking areas, hereinafter called the "Project," in accordance with the construction Contract Documents prepared by the firm of HKS Architects, Inc. (hereinafter referred to as the "Architect/Engineer" or "A/E"); and

WHEREAS, the County desires the services of the CM/GC to provide expert estimating and pricing, technical evaluation and other advisory services during the preconstruction phase of the Project, as stipulated herein; and

WHEREAS, it has been determined that the execution of this Contract is beneficial to the people of the County of Volusia, Florida.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and other specific consideration set forth in this Contract, the receipt and sufficiency of which is acknowledged by CM/GC and County, the parties agree and stipulate as follows:

**ARTICLE 1A**

**GENERAL DEFINITIONS**

Whenever in the Contract Documents the following terms are used (applicable to both the singular and plural), the intent and meaning of such items shall be interpreted as follows:

**1.1 ACCEPTANCE, FINAL ACCEPTANCE**

A formal action by the County of accepting the Work as being complete after certification by the County Representative or his designee of final completion.

**1.2 ADDENDUM**

A written explanation, interpretation, change, correction, addition, deletion, or modification of equal dignity herewith affecting the Contract Documents including drawing and specifications prepared by the Consultant, approved and issued by the County and/or distributed to third parties

**1.3 AFFIDAVIT**

The instrument which is to be signed by the Contractor or Consultant and submitted to the County upon the County's request through the Project Manager, upon completion of the Work, showing that

all bills have been paid. It shall also mean such instrument that may be requested by the County incidental to partial payments.

#### **1.4 AGENCY**

The State, a State agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under Sections 380.06 or 163.3220-163.3243 of the Florida Statutes.

#### **1.5 AMENDMENT**

An Amendment to this Contract in writing by the County, approved by the Director of Purchasing and Contracts, and signed by the County of equal dignity herewith authorizing an addition, deletion, or revision in the Scope of Work, adjustment in the Contract Price or the time for completion that is issued after execution of this Contract.

#### **1.6 APPLICATION FOR PROGRESS PAYMENT**

The current estimate form furnished and certified by the Contractor, Construction Manager, or General Contractor which is to be used by the foregoing in requesting progress payments for work performed in the Project.

#### **1.7 ARTICLE**

The subdivision of a section of the Contract, instructions to bidders, general conditions, and the special conditions.

#### **1.8 ARCHITECT**

A person or firm that is authorized to practice architecture pursuant to Florida Statute 481.299 or a General Contractor who provides architectural services under a design-build contract authorized by F.S. 481.299(3). "Architect" shall be synonymous with "Architect/Engineer," and "A/E."

#### **1.9 ARCHITECT/ENGINEER**

The design professional identified in the Contract Documents and who is licensed and registered in the State of Florida. The terms "Architect" and "Architect/Engineer (A/E)" means the architect/engineer or its authorized representative.

#### **1.10 BASIC AGREEMENT**

An agreement between the County and the Consultant covering the services requested from a formal solicitation.

#### **1.11 BID**

A Contractor's offer to the County in response to an invitation to bid (ITB) issued by a purchasing authority.

#### **1.12 BIDDER OR OFFEROR**

An individual, firm, or corporation submitting a response to an invitation to bid (ITB).

**1.13 BID DOCUMENTS**

The official forms on which the County requires formal bids to be prepared and submitted by the bidder.

**1.14 BID SECURITY OR BID BOND**

The security designated in the bid proposal to be furnished by the bidder as guarantee that it will enter into a contract for the Work awarded under a Contract.

**1.15 BONDS**

Bid, performance, labor and material payment, maintenance, and other instruments of security furnished by Contractor and its surety in accordance with the Contract Documents.

**1.16 CALENDAR DAY**

Any day, including Saturdays, Sundays, and holidays regardless of weather conditions.

**1.17 CHANGE ORDER**

A written order to the Contractor signed by the County or its designated representative(s) as specified in the Contract Documents authorizing an addition, deletion, or revision in the work, or an adjustment in the contract price or time.

**1.18. COMPENSATION**

The amount paid by the County to Consultant for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated which includes the total monies payable to the Consultant under this Contract which includes all services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete the Scope of Work.

**1.19 COMPLETION DATE**

The date that the County or its designated representative approves and accepts all Work or Services for a Scope of Work or this Contract.

**1.20 CONSENT OF SURETY OF FINAL PAYMENT**

A document from the Contractor's surety indicating that said surety has either made a careful examination of the books and records of the Contractor, or received the Contractor's affidavit, which satisfies the surety that all claims for labor and materials have been satisfactorily settled, and therefore approve final payment to the Contractor.

**1.21 CONSTRUCTION**

All labor, services, and materials provided in connection with the alteration, repair, demolition, construction, reconstruction, or any other improvements to real property.

**1.22 CONSTRUCTION MANAGER/GENERAL CONTRACTOR**

These terms shall be synonymous with "Construction Manager" and/or "General Contractor" and "CM/GC." The CM/GC is the entity identified as such throughout this Contract and is referred to as if singular in number and neutral in gender. The term "CM/GC" means the CM/GC or his representative

**1.23 CONSULTANT**

The person or entity qualified to perform work under a Contract and any Task Assignment related thereto. In addition, Consultant must be a professional engineer or engineering firm, including an architect (or registered landscape architect, surveyor and mapper, professional engineer, architect or registered landscape architect providing professional services within the meaning of Section 287.055, F.S.), who is registered in the State of Florida. In addition, the Consultant may be the engineer or architect or landscape architect of record or may provide services through and be subcontracted to the engineer of record.

**1.24 CONTINUING CONTRACT**

A contract for professional services entered into in accordance with all the procedures of Section 287.055, F.S. between the County and a firm whereby the firm provides professional services to the County for projects for work of a specified nature as outlined in this Contract as required by the County, with no time limitation except one governed by the termination provisions of this Contract.

**1.25 CONTRACT**

An agreement between the County and Contractor, with binding legal and moral force, covering the work to be performed in exchange for money.

**1.26 CONTRACT ADMINISTRATOR**

The Director of Purchasing and Contracts or his/her designee responsible for addressing any concerns within this Contract.

**1.27 CONTRACT BONDS**

The securities (Performance and Payment Bonds) furnished by the Contractor and the surety as a guarantee that the Contractor will fulfill the terms of the contract in accordance with the specifications, drawings and other contract documents.

**1.28 CONTRACT DOCUMENTS**

The contract documents comprise the entire contract and its attached exhibits and addenda between the County and the Contractor/Consultant or CM/GC that are attached to this contract, are made part of this contract, and includes, but are not limited to, the following: (1) Legal Advertisement, (2) Instructions to Bidders, (3) Bid Documents, (4) Bid Security or Bid Bond, (5) Certificates of Insurance, (6) Construction Contract, (6) Performance Bond, (7) Payment Bond, (8) General Conditions, (9) Special Conditions, (10) Technical Specifications, (11) Drawings, (12) Notice of Award and/or Proceed, (13) Written interpretation, (14) Written orders for minor changes in work, (15) Addenda issued before this contract is signed, and (16) any modifications or change orders to

the contract issued after execution of this contract.

**1.29 CONTRACT PRICE**

The total monies payable to the Contractor under the contract documents for a project.

**1.30 CONTRACT TIME**

The number of consecutive days, as stated in Article III, Paragraph 1 of the contract for the completion of the work.

**1.31 CONTRACTOR**

The person or entity qualified to perform work pursuant to Florida 489.105, F.S. under the Project and who is registered and licensed under the Florida Department of Business and Professional Regulation and in compliance with local laws or ordinances, other than a materialman or laborer, who enters into a contract with the County for improving real property in accordance with the Contract Documents.

**1.32 CONTRACTOR PROJECT MANAGER OR PROJECT MANAGER**

The individual responsible for the day-to-day administration of the project for the Contractor.

**1.33 CONTRACTOR'S RELEASE**

A document wherein the Contractor acknowledges receipt of full and final payment from the County in complete satisfaction of all the County's obligations under the contract and which releases and discharges County and the architect/engineer from all claims and demands arising from the work performed pursuant to the contract documents.

**1.34 COUNTY**

The County of Volusia, Florida, a political subdivision of the State of Florida for whom the Work is to be performed.

**1.35 COUNTY PROJECT MANAGER OR PROJECT MANAGER**

The County employee or authorized representative of the architect/engineer who is assigned to the Project and is responsible for the day-to-day administration of the Project for the County. The County may change the project manager at any time by providing notice to the Contractor and/or Consultant.

**1.36 COUNTY REPRESENTATIVE**

Also known as the Owner's representative who is the County Engineer or person designated by the County to review, approve and make decisions regarding the scope of work.

**1.37 DAY**

A calendar day of twenty-four hours measured from midnight to the next midnight.

**1.38 DELIVERABLE**



The result(s) or end products or services of a Project that meet the defined design or construction specifications, warranties, and functional parameters articulated in the Scope of Work for this Contract which, e.g., include but are not limited to: design drawings\specifications, structures, equipment, machinery, studies, reports, written documentation, training, systems or processes.

**1.39 DESIGN-BUILD FIRM:** A partnership, corporation, or other legal entity that:

**1.39.1** Is certified under Section 489.119, F.S. to engage in contracting through a certified or registered general Contractor or a certified or registered building Contractor as the qualifying agent; or

**1.39.2** Is certified under Section 471.023, F.S. to practice or to offer to practice engineering; certified under Section 481.219, F.S. to practice or to offer to practice architecture; or certified under Section 481.319, F.S. to practice or to offer to practice landscape architecture.

**1.40 DESIGN-BUILD CONTRACT**

A single contract with a design-build firm for the design and construction of a public construction project.

**1.41 DESIGN CRITERIA PACKAGE**

Concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the Project.

**1.42 DESIGN CRITERIA PROFESSIONAL**

A firm who holds a current certificate of registration under Chapter 481, F.S., to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under Chapter 471, F.S., to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

**1.43 DIRECT LABOR COST**

Represent those actual costs, exclusive of overhead and profit, reasonably and necessarily incurred and paid by the CM/GC in the construction performance phase services of this Contract, from the date of the Notice to Proceed until the completion of the Project, for payroll payments made to its employees working on the Project site, as described and defined in the Contract Documents.

**1.44 DRAWINGS/PLANS**

The official approved drawings or plans or exact reproductions thereof, which have been prepared and signed and sealed by an architect/engineer, which shows the location, character, dimensions

and details of the work to be done and which are considered as part of the Contract Documents.

**1.45 EFFECTIVE DATE**

The date that this Contract, Addendum, Amendment, Modification is fully executed by Consultant and the County.

**1.46 EMPLOYEE BENEFITS**

Include, without limitation, unemployment compensation contributions, social security taxes and other mandatory and customary contributions and fringe benefits, insofar as such costs are based on wages, salaries, or other remuneration normally and regularly paid by the CM/GC to its employees.

**1.47 ENGINEER**

The person, firm, or corporation named as such in the contract and/or authorized by the County to act as the County's representative or the County construction engineer authorized to practice engineering services pursuant to Florida Statute 471.03(2)(i)(2006) and who may serve as the County's engineers of construction, engineering and inspection. The term engineer shall be synonymous with design architect/engineer or architect/engineer or consultant.

**1.48 ENGINEER OF RECORD**

The professional engineer or engineering firm contracted or employed by the County and registered in the State of Florida who develops criteria and concept for the work, performs the analysis and is responsible for the preparation of the plans and specifications. The engineer of record may be County in-house staff or a consultant retained by the County.

**1.49 EQUIPMENT**

The machinery and equipment, together with the necessary supplies for maintenance, including the tools and apparatus necessary for the proper construction and acceptable completion of the work.

**1.50 FIELD ORDER**

A written instrument issued by the Consultant to the Contractor, which clarifies or interprets the drawings and technical specifications, and/or orders minor variations in the work, as opposed to a change in the work, and which does not involve an adjustment in contract price or time.

**1.51 FIRM**

Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.

**1.52 FORCE ACCOUNT WORK**

Work performed in addition to that set forth in the original contract or in supplemental contracts or change orders, and which is paid for on the basis of actual cost of materials and labor, plus a fixed percentage of such costs.

**1.53 FURNISH**

Supply and deliver ready for unloading, unpacking, assembly, erection, anchoring, applying, working to dimension, protecting, cleaning, and similar operations.

**1.54 GUARANTEED MAXIMUM PRICE (GMP)**

Guaranteed Maximum Price shall represent CM/GC's guaranteed offer to the County of the maximum price for which it will construct the Project as represented in the Design Documents, including a fee for CM/GC's services.

**1.55 IMPROVEMENT**

Any building, structure, construction, demolition, excavation, solid-waste removal, landscaping, or any part thereof existing, built, erected, placed, made, or done on land or other real property for its permanent benefit.

**1.56 INSPECTOR OR FIELD REPRESENTATIVE**

County employee or an authorized representative of the architect/engineer assigned to make any or all necessary inspections of the work performed and materials furnished by the Contractor.

**1.57 INSTALL**

See furnish.

**1.58 LABORER**

Any person other than an architect, landscape architect, engineer, surveyor and mapper, and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or labor service of others.

**1.59 LABOR AND MATERIAL BOND**

See payment bond.

**1.60 LANDSCAPE ARCHITECT**

A person or firm that is authorized to practice landscape architecture pursuant to Florida Statute 481.311.

**1.61 LUMP SUM**

A pay item within the contract documents, which is paid without regard to quantities or unit of measure.

**1.62 MATERIALMAN**

Any person who furnishes materials under contract to the owner, Contractor, Subcontractor, or Sub-subcontractor on the site of the improvement or for direct delivery to the site of the improvement or, for specially fabricated materials, off the site of the improvement for the particular improvement, and who performs no labor in the installation thereof.

**1.63 MATERIALS**

Any substance used in connection with the construction of any structure, facility, or appurtenance, or of other work under the contract.

**1.64 MODIFICATON**

A written amendment to the Contract Documents approved by the County and signed by the Contractor and the County or County's designated representative(s) (including the CM/GC and/or A/E) which includes but is not limited to, Addenda, Amendments, Change Orders or Field Orders.

**1.65 NOTICE OF ACCEPTANCE (NOA)**

The official letter from the County notifying the successful bidder that they have been awarded a contract.

**1.66 NOTICE OF AWARD (NOA)**

See Notice of Acceptance; OR

A written notice by County that the Consultant has been determined by a selection committee to be highly qualified and approved for an award of a contract.

**1.67 NOTICE TO PROCEED (NTP)**

The official letter from the County to the Contractor or Consultant establishing a date on which the Work will commence.

**1.68 ORIGINAL EXPIRATION DATE**

The date that this Contract was originally intended to expire excluding any extensions or renewals of this Contract for a time certain.

**1.69 OWNERS**

The owner is the County of Volusia for whom all Work or Services under the contract documents are performed by the Contractor or Consultant.

**1.70 PART "B" CONTRACT**

The fixed capital outlay for Construction Performance Phase Services for the Volusia County Branch Jail Receiving and Booking, the CM/GC's Scope of Work as articulated in Part A and Part B Contracts which includes the entire scope of work which shall be performed in accordance with the Contract Documents.

**1.71 PAYMENT BOND**

A bond, which assures payments, as required by law, to all persons supplying labor or material for the completion of work under the contract.

**1.72 PENAL SUM**

The amount in which a bond is issued is called the “penal sum,” or the “penalty amount,” of the bond.

**1.73 PERFORMANCE BOND**

A bond given by a surety on behalf of the Contractor to ensure the timely performance of the SOW of this Contract.

**1.74 PERSON**

The word “person” shall mean and includes any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or capacity, whether appointed by a court or otherwise, and any combination of individuals or “persons.”

**1.75 PLANS**

See Drawings.

**1.76 PRE-CONSTRUCTION CONFERENCE**

The meeting of all the parties involved with the planning and execution of the construction of the project.

**1.77 PRE-PROPOSAL CONFERENCE**

The meeting scheduled by the County Project Manager of all the parties involved with the planning and execution of the Project.

**1.78 PRINCIPAL**

When used in the bid bond, the word “principal” means the same as the word “bidder.” When used in the performance and payment bonds, the word “principal” means the same as the word “Contractor.”

**1.79 PRODUCT**

The materials, systems, and equipment.

**1.80 PROFESSIONAL SERVICES**

Those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

**1.81 PROJECT**

**1.81.1** Fixed capital outlay study or planning activity described in the public notice of the State or County which includes the entire Scope of Work which shall be performed in accordance with the Contract Documents. A Project may include:

- 1.81.1.1** A grouping of minor construction, rehabilitation, or renovation activities.
- 1.81.1.2** A grouping of substantially similar construction, rehabilitation, or renovation activities.
- 1.81.1.3** The entire work to be performed pursuant to the Contract Documents.

**1.82 PROJECT MANAGER**

See County Project Manager.

**1.83 PROPOSAL**

The document submitted by the bidder in response to a formal solicitation to be used as the basis for negotiations for entering into a Contract, OR

The document submitted by the Consultant in response to a formal solicitation used to determine if the Consultant is highly qualified.

**1.84 PROVIDE**

To furnish, install, complete, and have ready to use.

**1.85 PROVIDED**

As used in the specifications or upon the drawings provided shall mean, "furnished and installed." Where as shown, as indicated, as detailed or words of similar import are used, it shall be understood that references to the drawings and/or specifications accompanying these documents are intended unless otherwise expressly stated.

**1.86 REQUEST FOR INFORMATION (RFI)**

Prospective Bidders', Contractors' or Consultants' inquiries for information.

**1.87 REQUEST FOR PROPOSAL (RFP)**

An invitation process initiated by the County soliciting proposals (offers) to invitation from Contractors or consultants (bidders) to perform work or provide services in one or more projects on behalf of the County.

**1.88 REQUEST FOR STATEMENT OF QUALIFICATIONS (RSQ)**

An invitation process initiated and used by the County to select Contractor(s) or consultant(s) to perform work or provide services in a prospective project(s) based upon their apparent qualifications as submitted by them (respondents) in response to the invitation.

**1.89 RESIDENT PROJECT REPRESENTATIVE**

An employee of the County or an authorized representative of the architect/engineer who is assigned to the project and is responsible for overseeing that the work is constructed in accordance with the requirements of the drawings and specifications.

**1.90 RESPONSIVE BIDDER**

A bidder or offeror who has submitted a bid which conforms in all material respects to the requirements stated in the bidding documents.

**1.91 RESPONSIBLE BIDDER**

A bidder or offeror who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

**1.92 SCOPE OF SERVICES/WORK**

The general services/work, herein defined in this Contract, including responsibility for performing and complying with all incidental matters pertaining thereto, as set out in the Contract Documents.

**1.93 SECURITIES**

See performance or payment bonds.

**1.94 SERVICES**

Those services are the professional services of work or tasks as defined in Section 287.055, F.S. to be performed by the Consultant as provided for under this Contract which shall be performed by a duly licensed professional engineer or engineering firm, architect or architectural firm, landscape architect or landscape architectural firm, surveyor, and/or mapper who is registered in the State of Florida.

**1.95 SHOP DRAWINGS**

All diagrams, illustrations, brochures, schedules, and/or other data which are prepared by Contractor, a Subcontractor, manufacturer, supplier, distributor, or other person on behalf of the Contractor, and which illustrate the equipment, material, or some portion of the work.

**1.96 SPECIAL CONDITIONS**

Specific clauses supplemental to the other contract documents setting forth conditions varying from or additional to the other contract documents for a specific project.

**1.97 SPECIFICATIONS**

The document or Scope of Work that establishes the material and performance requirements of goods and services.

**1.98 STATE**

State of Florida.

**1.99 SUBCONSULTANT**

A person other than a materialman or laborer who enters into a contract with a Consultant for the

performance of any part of the basic contract.

**1.100 SUBCONTRACTOR**

A person other than a materialman or laborer who enters into a contract with a general Contractor for the performance of any part of the contract documents.

**1.101 SUB-SUBCONSULTANT**

A person other than a materialman or laborer who enters into a contract with a subconsultant for the performance of any part of such subconsultant's contract.

**1.102 SUB-SUBCONTRACTOR**

A person other than a materialman or laborer who enters into a contract with a Subcontractor for the performance of any part of such Subcontractor's contract.

**1.103 SUBSTANTIAL COMPLETION (CONSTRUCTION)**

The date in which the construction of the project, or specified part thereof, of any substantial nature has been completed, as certified by the architect/engineer in accordance with the contract documents, so that the project, or specified part, can be utilized for the purposes for which it was intended. If the County has authorized a person, firm, or corporation, other than the architect/engineer, to act as County's representative, then such County's representative shall certify the completion date and when the project is substantially completed.

**1.104 SUBSTANTIAL COMPLETION (NON-CONSTRUCTION)**

The date as certified by the County's Project Manager when the Project or a specified part as agreed to in writing by the parties is sufficiently completed to the satisfaction of County or its designated representative, in accordance with the Contract Documents, so that the project or specified part can be utilized for the purposes for which it was intended; or if there be no such certification, the date when final payment is due.

**1.105 SURETY**

An individual or corporation legally liable for the debt, default, or failure of a principal to satisfy the obligations of a contract.

**1.106 SUPERINTENDENT**

The Contractor's authorized executive representative responsible for the work at all times.

**1.107 TASK ASSIGNMENT**

Specific, detailed services or work placed against an awarded established continuing services contract.

**1.108 TRADE CONTRACTOR**

The person or entity qualified to perform work under this Contract including a Contractor, Subcontractor, supplier, laborer or materialman that has a direct contract with the CM/GC to



perform work in the Project.

#### **1.109 WORK**

Any and all obligations, services, duties, and responsibilities necessary to the successful completion of the Project including supplying and installing of all labor, materials, equipment and other incidentals related thereto.

#### **1.110 WORK ORDER**

A written authorization to the Contractor signed by the County, concerning the performance of work and/or the furnishing of materials on a force account basis as provided in the general conditions.

### **ARTICLE 2A**

#### **PURPOSE AND INTENT, CONTRACT DOCUMENTS**

**2.1** The primary purpose and intent of Part A, Preconstruction Services for the Volusia County Branch Jail Receiving and Booking (hereinafter referred to as "Part A"), of this Contract is to secure for the County the services of a firm thoroughly experienced and highly qualified in both the "hands-on" construction methods and techniques, as well as the efficient management of construction operations to provide technical consultation on the Project; to determine the cost of constructing each component of the Project and the associated contingency funds required, thereby arriving at the estimated Project Budget and ultimately establish the Guaranteed Maximum Price, hereinafter referred to as the "GMP," to schedule the Project efficiently for construction phases and prepare the Project Schedule such that the Project will be ready for occupancy at the earliest practical date; and to review the design documents of the Project with the design professionals and advise upon the most efficient use of materials and construction methods to be employed for achieving quality construction at the least cost.

**2.1.1** The CM/GC covenants with the County to furnish its best skill and judgment in furthering the interests of the County. The CM/GC agrees to furnish efficient business administration, construction management and superintendence and to use its best efforts to complete the Project in an expeditious and economical manner consistent with the interest of the County. To that end, the CM/GC will maintain adequate cost and schedule control systems and perform screening of Trade Contractors to assure a high quality of construction consistent with the requirements of the Contract Documents.

**2.1.2** Upon notice that the County elects to proceed with Part B, Construction Performance Phase Services for the Volusia County Branch Jail Receiving and Booking (hereinafter referred to as "Part B"), the CM/GC shall post performance and payment bonds each in the amount of 100% of the Guaranteed Maximum Price, and on written "Notice to Proceed," shall immediately commence the performance of the services required in Part B of the Contract.

**2.1.3** The CM/GC shall provide the insurance and bonding for the Project as required in section 6.4 and shall be reimbursed the cost in accordance with Article 3A, section 3.12.2.5, hereunder.

#### **2.2 EXHIBITS**

**2.2.1** The exhibits listed below are incorporated into and made a part of this Contract.

2.2.1.1 Exhibit "A" – Ajax Building Corporation letter dated November 6, 2011.

## **2.3 AUTHORITY FOR CONTRACTING**

- 2.3.1** By executing this Contract, the CM/GC represents that it has visited the site, familiarized itself with the local conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents. The CM/GC and each Trade Contractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation:
- 2.3.1.1** The location, conditions, layout and nature of the Project site and surrounding areas,
  - 2.3.1.2** Anticipated labor supply and costs,
  - 2.3.1.3** Availability and cost of materials, tools, equipment, and other similar issues, and
  - 2.3.1.4** The County assumes no responsibility or liability for the physical conditions or safety of the Project site or any improvements located on the Project site. The CM/GC shall be solely responsible for providing a safe place for the performance of the Work and the County shall not be required to make any adjustment in either the agreed amount of the GMP or the Contract Time in connection with any failure by the CM/GC or any Trade Contractor to comply with the requirements of Paragraph 1.1.4, hereof.
- 2.3.2** This Contract between the County and the CM/GC is intended solely for the benefit of the County and the CM/GC and no other persons or entities. The services to be performed hereunder shall be performed by the CM/GC's own staff, unless otherwise authorized by the County. The employment of, contract with, or use of the services of any other person or firm by the CM/GC, as consultant or otherwise, shall be subject to the prior written approval of the County. Such approval shall not be construed as constituting an contract between the County and any such person or firm.
- 2.3.3** In the event the parties hereto enter into a subsequent Contract specifically modifying this Contract between County and CM/GC, it is expressly agreed that such modification shall take precedence over this Contract to the extent of the modification only.
- 2.3.4** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- 2.3.5** Work not covered in the Contract Documents shall not be required unless it is consistent therewith and is reasonably inferable there from as being necessary to produce the intended results.
- 2.3.6** Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 2.3.7** The organization of the Technical Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the CM/GC in dividing the Work among Trade Contractors or in establishing the extent of Work to be performed by any one of them.

**2.3.8** Order of Precedence. If CM/GC finds a conflict, error or discrepancy in the Contract Documents, it shall call it to the Architect's attention, in writing, and request the Architect's interpretation and direction before proceeding with the Work affected thereby. Such notice shall be provided by the CM/GC to the Architect in a timely fashion so as not to cause additional costs due to delay. In resolving such conflicts, errors and discrepancies, the documents shall be given precedence in the following order:

- 2.3.8.1** Modifications to the Contract
- 2.3.8.2** This Contract between the County and CM/GC, Part A
- 2.3.8.3** Addenda or Exhibits to this Contract
- 2.3.8.4** Detailed (Technical) Specifications
- 2.3.8.5** Project Plans (Drawings)
- 2.3.8.6** Procedures for Advertising, Pre-Qualification, Bidding and Contract Award for Trade Contracts
- 2.3.8.7** Bonds and Guaranties

**2.3.9** In the case of conflicts between drawings or between provisions of the specifications, the more detailed or specific of the conflicting provisions or representations shall take precedence. For example, where figured dimensions are shown on the drawings, they shall take precedence over scaled distances and scaled dimensions, and detail drawings shall govern over general drawings.

**2.3.10** In those cases where it is not reasonably clear which of the conflicting provisions or representations is the more detailed or specific, the CM/GC shall be deemed to have estimated on, and agreed to provide, the greater quantity or better quality of materials and work unless he shall have, prior to submitting the GMP, asked for and obtained a written decision of the A/E as to which quantity or quality or method or materials shall be required.

### **ARTICLE 3A**

#### **CONSTRUCTION MANAGER/GENERAL CONTRACTOR'S SERVICES: PART A**

- 3.1** **Review of Plans and Specifications.** Review all plans and specifications and advise on site, foundation, building systems, materials and equipment, construction feasibility, availability of labor and materials, time requirements for procurement, installation and construction relative costs, and provide recommendations for economies as appropriate. Technical consultation to the A/E and its professional disciplines shall not infringe upon the design responsibility of those disciplines. The CM/GC shall make recommendations relating to the cost, constructability and other such technical and economical characteristics of a particular design or material selection; however, if such recommendations are accepted for incorporation into the Project, their application with regard to structural stability and life safety shall be the responsibility of the A/E. The CM/GC shall not be assigned responsibilities which duplicate those assigned in the design professionals' contract for A/E services.
- 3.2** **Technical Proposals.** Review performance specifications, consult with the A/E on the structuring of requests for proposals for the procurement and installation of technical systems and components of the Project and verify their availability. The CM/GC shall issue requests for proposals to qualified sources and shall receive proposals.
- 3.3** **Cost Consultation.** The CM/GC shall provide a continuous cost consultation service for the duration

of this Contract. The CM/GC shall prepare solicitation and purchasing documents and be responsible for all procurement and construction cost estimates. The CM/GC shall prepare final cost estimates for all early procurement of equipment and materials; for all building systems and components; and for all construction labor. The CM/GC shall notify the County when, in its opinion, the estimated construction cost will exceed the GMP and at any time the anticipated completion date will exceed the approved scheduled completion.

- 3.4 Value Engineering.** The CM/GC shall review the plans and specifications as prepared by the A/E and perform value engineering services. The County Representative, the A/E and the CM/GC shall review the proposed changes and the County shall determine which shall be incorporated into the plans and specifications. As an optional service, not included in the cost of Part A, the CM/GC may be called upon to develop these changes into drawing formats generally compatible with the existing plans and specifications. The fee for this optional work will be determined when required.
- 3.5 Long Lead Time Procurement.** Identify, recommend for purchase, and expedite the procurement of equipment, materials and supplies which require long lead time for procurement or manufacture.
- 3.6 Construction Documents.** Make recommendations to the County and the A/E regarding the division of Work into separate bid packages to affect economy and permit phasing of procurement and construction. Consideration shall be given to such factors as type and scope of work, time of performance, availability of labor and materials, community relations, factory versus on-site production costs, shipping costs and size limitations, building code restrictions, local ordinances requirements, and other limiting factors.
- 3.7 Trade Work Coordination.** Review and analyze the plans, specifications and schedules for the Project and make the necessary recommendations to minimize conflict and overlap of jurisdiction between Trade Contractors.
- 3.8 Project Site Facilities.** Review the Plans and Specifications to ensure that they contain provision for all temporary facilities required for the performance, management, inspection and supervision of the Work.
- 3.9 Bidding Documents and Advertisement for Bids.** In collaboration with the A/E, review all design documents, divide the Work in bid packages, and assemble complete bid data, including copies of plans and specifications provided by the A/E, so as to achieve maximum competition among qualified bidders and to obtain the most reasonable price for good quality work. Prepare invitation for bids describing each package clearly, accurately and in sufficient detail to inform prospective bidders of the nature and scope of the work including instructions for submitting qualifications. Prepare a list of potential bidders for the various portions of the Work for review with the County. Verify references and previous performance of potential bidders and review all such findings with the County. The procedure for advertising, pre-qualification, bidding and awarding trade contracts shall be agreed upon by the County and the CM/GC.
- 3.10 Obtaining Competitive Bids.** The CM/GC shall endeavor to achieve maximum competition among qualified bidders in order to obtain the most reasonable price for acceptable work. Using its best business skills, the CM/GC shall develop Trade Contractors' interest in the Project by publicizing the invitation for bids through distribution to reputable local Trade Contractors and suppliers, posting in public places, advertising in newspapers and trade journals, and such other means as may be appropriate, in sufficient time to enable prospective bidders to prepare and submit their qualifications. In close collaboration with the County's representative's schedule and conduct pre-bid conferences to inform prospective bidders of the requirements of the Contract Documents, provide clarifications and answer questions as necessary. The specific requirements of compliance

with the laws and regulations of various governmental agencies having jurisdiction over the Project (i.e., Disadvantaged and Women Business Enterprises (D&WBE), Municipal code section 2-269, County Ordinance No. 90-20, § 9,5-17-90; compliance with the Public Entity Crimes law; applicable laws, etc.) shall be fully explained and emphasized at the pre-bid conference. The CM/GC may require bidders to submit bid bonds and evidence of bonding capacity, as well as meet specified qualifications as prerequisite to bidding on the Work; however, unnecessarily restrictive requirements which might unduly limit the number of bidders shall be avoided. Specific instructions stating clearly whether bonding is required or not shall be included with each bid package.

**3.10.1** Solicit competitive bids on appropriate bidding packages from qualified Trade Contractors. Analyze and evaluate the bids received and their relationship to budgeted amounts and prepare for review with the County bid tabulation and such other supporting data as necessary to properly compare the bids and their responsiveness to the desired scope of work. Review the scope of work in detail with apparent qualified low 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 the County for award of trade contracts, identifying the D&WBE to be utilized. Award and execute trade contracts with the successful bidders. Provide to the County copies of fully executed trade contracts, insurance certificates and bonds.

**3.10.2** Should the County have objections to awarding an contract to any pre-qualified Trade Contractor or supplier, the County shall timely notify the CM/GC upon review of the pre-qualified bidders list. The CM/GC shall not solicit a bid proposal from a bidder so rejected.

**3.10.3** All permanent construction for the Project shall be performed under trade contracts between the CM/GC and its Trade Contractors. The procurement activity of the CM/GC should be such as to preclude any conflict of interest. In particular, the CM/GC shall avoid bidding work in competition with bidding Trade Contractors. Neither the CM/GC nor any firm in which a principal stockholder or member of the CM/GC's firm has a financial interest, shall during the term of the Contract make or cause to be made any bid for construction work on the Project. Notwithstanding the foregoing and upon County's written approval, the CM/GC may perform with its own employees work of a Trade Contractor who fails to perform in accordance with the provisions of its trade contract or if CM/GC's performance of some portions of the Work will result in cost savings to the County.

**3.11 Management Control System.** The CM/GC shall initiate and, upon execution of Part B, of the Contract, activate a management control system (MCS) as integral part of the Project Control System, using both manual and automated procedures to support such functions as planning, organizing, scheduling, budgeting, reporting construction progress and expenditures, accounting, documentation, identifying variances and problems and facilitating decision making. The data provided by the MCS must be timely, must be responsive to the needs of management at all levels, and must be fully capable of providing a sound basis for managing the construction of the Project.

**3.11.1 Subsystems of MCS.** The Management Control System shall incorporate three major subsystems for use in meeting the objectives of the County for timely completion, economies and quality. Upon execution of Part B, the CM/GC shall provide the services, facilities and support equipment necessary to implement the MCS for the entire duration of the construction phase.

**3.11.2 Planning and Progress Monitoring Subsystem.** The CM/GC shall prepare a schedule that integrates the projected activities of the CM/GC, the A/E and the County particularly as they relate to the value engineering effort and the preparation of the GMP. The CM/GC shall

produce a preliminary construction schedule for review and approval by the County. The CM/GC shall prepare a final construction schedule incorporating changes required as a result of the County's review. This schedule shall be based on the Critical Path Method (CPM) and shall be updated and included in the Monthly Progress Report.

**3.11.3 Budget Control and Accounting Subsystem.** Provide for the periodic inclusion of approved change orders in the original budget. The new budget figure will be identified as the "current working estimate." Identify variances between "current working estimate" and the original budget and report them promptly to the County.

**3.11.4 Documentation and Historical Subsystem.** Provide documentation of all changes made in the original schedule and original budget so that complete traceability is maintained between the original plan (schedule and budget) and the latest approved plan.

**3.11.5 Reports.** The MCS, when fully implemented, will generate reports necessary for effective control of the overall construction program. Reports will be provided to management in summary form. Reports will also be provided to subordinate levels of management in sufficient detail consistent with their respective requirements and responsibilities.

**3.12 Preparation of the Guaranteed Maximum Price (GMP).** On or before the date stipulated in Article 3, hereof, the CM/GC shall prepare and submit for County's approval an itemized GMP for the construction of the Project, clearly summarizing the cost for each component of the Work as it was packaged and bid and establishing the amount of contingency funds required. Upon contract of the County and CM/GC on the GMP, the detailed itemization of costs, prices and supporting data comprising the GMP shall be incorporated in the Part B Contract to be executed by the County and CM/GC as Exhibit "B". The GMP shall represent CM/GC's guaranteed offer to the County of the maximum price for which it will construct the Project, as represented in the Design Documents, including a fee for CM/GC's services. During the construction phase, the GMP will be subject to modification for changes in the Construction Documents approved by the County and for additional costs arising from delays caused by persons, entities, events or circumstances entirely beyond the control of the CM/GC as provided in Part B of this Contract. The Plans and Specifications, the Site Plan and Survey, and all soil and subsurface investigations upon which the GMP is established shall be identified in the Part B Contract as Exhibit "B". The GMP shall be the sum of:

**3.12.1 Direct Labor Cost:** This category of expenses shall include (provided the GMP is not exceeded) and are limited to the following cost items:

**3.12.1.1** Wages and employee benefits as may be payable, paid for labor, other than the Project site supervisory and office employees, in the direct employ of the CM/GC and used for performing the Contract work;

**3.12.1.2** Travel and lodging expenses of CM/GC's officers or employees incurred in the discharge of duties connected with the Project in accordance with the County of Volusia Travel Reimbursement policy. Relocation costs of CM/GC's employees in connection with this Project shall not be reimbursable.

**3.12.2 Cost of the Work:** The Cost of the Work shall include, without limitation, the cost items set forth as follows:

**3.12.2.1** The cost of all materials, supplies and equipment incorporated in the Work and the cost of transportation and storage thereof. The County, at its sole discretion, may make payment for materials, supplies or equipment stored off-site;

- 3.12.2.2** Payments made by the CM/GC to its Trade Contractors for work performed for the Project under trade contracts;
- 3.12.2.3** The cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers, which are used and consumed in the performance of the Work and the cost, less salvage value, on items used but not consumed which remain the property of the CM/GC. This cost shall not include the cost of materials, supplies, equipment, temporary facilities and hand tools furnished by Trade Contractors as part of their trade work which shall be incorporated in the trade contracts cost;
- 3.12.2.4** Rental charges of all necessary motor vehicles, machinery and equipment, including hand tools, whether rented from the CM/GC or others, and including transportation and delivery costs, installation, maintenance, repair and replacement, and dismantling and removal, at rental charges consistent with those prevailing in the area of the Project;
- 3.12.2.5** Actual cost, without mark-up, of the premium for all insurance and bonds which the CM/GC is required to provide pursuant to this Contract;
- 3.12.2.6** Sales, use, gross receipt, or similar taxes related to the performance of the Work, imposed by any governmental authority and for which the CM/GC is liable;
- 3.12.2.7** Building and operating permit fees, inspection and filing fees, sewer and water fees and deposits lost for causes other than CM/GC's own negligence;
- 3.12.2.8** Losses, expenses or damages to the extent not compensated by insurance or otherwise, including settlement made with the written approval of the County;
- 3.12.2.9** The cost of corrective work (within the GMP limit);
- 3.12.2.10** Minor expenses such as telegrams, long-distance telephone calls, telephone service at the Project site, postage, office supplies, and similar items;
- 3.12.2.11** Cost of debris and trash removal including daily cleanup;
- 3.12.2.12** Cost of final cleanup prior to occupancy including window washing, dusting of all surfaces, carpet cleaning and vacuuming, floor polishing, fixture cleaning etc;
- 3.12.2.13** Cost related to emergencies affecting the safety of persons and loss of property;
- 3.12.2.14** Legal costs properly resulting from prosecution of the Work for the County, provided that they are not the result of CM/GC's own negligence or malfeasance. Legal costs incurred in connection with disputes with the County shall not be included in the Cost of the Work;
- 3.12.2.15** Cost of items related to the Project Safety Program including barricades, fire fighting equipment and extinguishers, special and protective wearing apparel and safety equipment, temporary roads and parking, dust and noise control, installation and operation of temporary hoists, scaffolds, ladders and runways, and likely items;

- 3.12.2.16** Cost of watchmen or similar security services;
  - 3.12.2.17** Cost of survey, measurement and layout work required for the proper execution of the Work;
  - 3.12.2.18** Cost of purchase or rental of office equipment such as typewriters, cameras, radio communications, computers, pagers, copiers, dictating units, and other items such as office and tool trailers, vehicles and furniture purchased by CM/GC in connection with the Work;
  - 3.12.2.19** Cost of preparation of shop drawings, coordination drawings, photographs, and "as-built" documentation;
  - 3.12.2.20** Cost of data processing, computerized scheduling and document reproduction services required in the performance of the Work; and
  - 3.12.2.21** Costs incurred during the warranty period after completion of the Project (within the GMP limit).
- 3.12.3 CM/GC's Fee:** The County and the CM/GC hereby agree that the CM/GC's fee shall not exceed FIVE PERCENT (5%) of the "Direct Labor Cost" and "Cost of the Work" (See Sections 3.12.1. and 3.12.2, above). The intent and purpose of the GMP is to establish a maximum not-to-exceed price for the total Contract price, not a maximum price for line items, said line items being subject to adjustment by the CM/GC, upon approval by the A/E and the County, provided that such adjustments do not cumulatively exceed this Contract's GMP. The CM/GC fee shall include the following:
- 3.12.3.1** Salaries or other compensation of CM/GC's employees at the principal office and branch offices, except employees listed in Section 3.12.1 hereof;
  - 3.12.3.2** General administrative and operating expenses of CM/GC's principal and branch offices other than the Project site office;
  - 3.12.3.3** Any part of CM/GC's capital expenses, including interest on CM/GC's capital employed for the Project, if any;
  - 3.12.3.4** Overhead and any other costs incurred by the CM/GC in the performance of the Contract; and,
  - 3.12.3.5** Cost in excess of the Guaranteed Maximum Price, if any is incurred.
- 3.12.4** Adjustments of the Fee shall be made only as follows:
- 3.12.4.1** For approved changes in the Work (additional), an increase to the fee in an equitable amount to be included in the Change Order.
  - 3.12.4.2** If the CM/GC is placed in charge of the reconstruction of any insured or uninsured loss, the fee shall be increased in the same proportion as set forth in Section 3.12.4.1.
- 3.12.5** The GMP shall include only those taxes which are legally enacted at the time the GMP is



established. Taxes included in the GMP shall be segregated by category of taxes so that the County may insure that the tax exemptions applicable to County are excluded from the GMP.

**3.12.6** The value included in the GMP for General Conditions and supervision shall be defined as a fixed amount and agreed upon by the County and the CM/GC at the time the GMP is accepted by the County. The County and the CM/GC further agree that the provisions of Section 3.12.3, hereof, in reference to the GMP line item budgeted amount adjustment, as applicable to the General Conditions and supervision total amount, shall be limited and shall not exceed the agreed fixed amount by more than a maximum of ten percent (10%), if absolutely necessary. All cost savings, if any, shall be returned to the County as part of the net aggregate savings established at the time the final accounting is submitted, at the completion of the Work.

**3.12.7 Exclusions.** The GMP shall not include such Project expenses as cost of site, site survey and subsurface investigations, professional design fees, construction materials testing and inspection services, or moveable equipment and furnishings.

#### **ARTICLE 4A**

##### **TIME FOR PERFORMANCE**

- 4.1** The CM/GC shall submit its first estimate of the GMP as described in Section 3.12 to the County for review within sixty (60) days of receipt of all Design Documents. Based upon this estimate(s), the CM/GC and the County will collaborate to resolve any budget estimate differences in order to reach a GMP satisfactory to both the CM/GC and the County. Such action by the CM/GC and the County shall be accomplished within a maximum of 21 (twenty-one) days of submission of the GMP. Approval of the GMP shall not be unreasonably withheld.

#### **ARTICLE 5A**

##### **EXECUTION OF PART B, CONSTRUCTION PERFORMANCE PHASE SERVICES FOR THE NEW CONSOLIDATED DISPATCH/EMERGENCY OPERATIONS CENTER OF THE CONTRACT**

- 5.1** Upon the County's timely approval of the GMP as provided under Section 3.12, hereon, the CM/GC agrees to enter into Part B of the Contract on the basis of the proposed GMP as provided in Section 3.12 hereof.
- 5.2** During the performance of this Contract Part A, and Part B when it is entered into by County and CM/GC, the CM/GC shall not be considered an employee of the County, or County's agent. The CM/GC shall perform its services and duties consistently with such status, and will make no claim or demand for any right or privilege applicable to an officer or employee of the County, including, but not limited to, workman's compensation, disability benefits, accident or health insurance, unemployment insurance, social security or retirement membership.

**ARTICLE 6A**  
**Insurance and Bonding**

**6. INSURANCE REQUIREMENTS**

6.1 **Required Types of Insurance.** The Contractor shall purchase and maintain at its own expense, during the term of this Contract the following types and amounts of insurance with limits no less than those shown below, in the form and from companies satisfactory to the County:

<u>SCHEDULE</u>	<u>LIMITS</u>
Workers' Compensation	Florida Statutory Coverage
Employers Liability .....	\$100,000 Each Accident
(including Appropriate Federal Acts)....	\$500,000 Disease Policy Limit
	\$100,000 Each Employee/Disease
Commercial General Liability.....	\$2,000,000 General Aggregate
Premises-Operations.....	\$2,000,000 Products/Comp Ops Aggregate
Products-Completed Operation.....	\$1,000,000 Personal/Advertising Injury
Blanket Contractual Liability.....	\$1,000,000 Each Occurrence
Independent Contractors.....	\$50,000 Fire Damage
	\$5,000 Medical

**(The County of Volusia shall be named as an additional insured under all of the above Commercial General Liability coverage.)**

Auto Liability.....	\$1,000,000 CSL
All autos-owned, hired or no-owned	
(Symbol 1 Coverage)	
Umbrella Liability.....	\$1,000,000 Per Occurrence
Professional Liability.....	\$1,000,000 (Project Specific)
(Errors & Omissions)	
Contractors Pollution Liability.....	\$1,000,000 Per Loss
	\$2,000,000 Annual Aggregate
Pollution Legal Liability.....	\$1,000,000 Per Loss
	\$1,000,000 Annual Aggregate

**6.1.1** Minimum underlying coverage's shall include Commercial General Liability, Automobile Liability and Workers' Compensation/Employer's Liability. Umbrella liability limit will not be required to be carried by subcontractors.

**6.1.2** Umbrella or Excess Liability policies may be used to obtain the total limits of liability required to meet the required limits of coverage stated above. Evidence of such coverage should clearly demonstrate the underlying coverage's/policies that are

included.

**6.1.3** Workers' Compensation Insurance. Workers' Compensation insurance is required for all employees of the Contractor, employed or hired to perform or provide Work or Services under this Contract or that is in any way connected with Work or Services performed under this Contract, without exclusion for any class of employee, and shall comply fully with the Florida Workers' Compensation Law (Chapter 440, Florida Statutes, Workers' Compensation Insurance) and include Employers' Liability Insurance with limits no less than the statutory amount shown above per occurrence.

**6.1.3.1** Contractor and its Subcontractors, or any associated or subsidiary company doing Work on County property or under this Contract must be named in the Workers' Compensation coverage or provide proof of their own Workers' Compensation coverage, without exclusion of any class of employee, and with a minimum of the statutory limits per occurrence for Employer's liability coverage. Further, if the Contractor's Subcontractors fail to obtain Workers' Compensation insurance and a claim is made against the County by the uncovered employee of said Subcontractor of the Contractor, the Contractor shall indemnify, defend, and hold harmless the County from all claims for all costs including attorney's fees and costs arising under said employee(s) Workers' Compensation insurance claim(s).

**6.1.4** Commercial General Liability Insurance. Commercial General Liability insurance, with a limit of not less than the amounts shown above with an aggregate limit and per occurrence basis, including coverage for the Contractor's operations, independent Contractors, Subcontractors and "broad form" property damage coverage's protecting itself, its employees, agents, Contractors or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal or advertising injury, products liability/completed operations including what is commonly known as groups A, B, and C (libel, false arrest, slander). Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Contractor or by any of its Subcontractors arising from Work or Services performed under this Contract. Public liability coverage shall include either blanket contractual insurance or a designated contract contractual liability coverage endorsement, indicating expressly the Contractor's contract to indemnify, and hold harmless the County as provided in this Contract. The commercial general liability policy shall be endorsed to include the County as an additional insured. The commercial general liability policy shall provide exclusive coverage for the location or project site where the Work or Services are to be performed under this Contract. In the alternative, the commercial general liability policy shall be endorsed to provide the designated aggregate per location endorsement or equivalent on a form approved or requested by the County Risk Manager.

**6.1.5** Excess/Umbrella Liability. The Contractor shall obtain an excess liability policy in

addition to the scheduled underlying policies (commercial general liability, business auto liability, professional, and employers' liability) with a limit of no less than the amount shown above. This insurance shall name the County as an additional insured and include either blanket contractual or a designated contract contractual coverage endorsement, indicating expressly the Contractor's contract to hold the County harmless. The excess/umbrella liability policy shall provide exclusive coverage for the location or project site where the Work or Services are to be performed under this Contract. In the alternative, the excess/umbrella liability policy shall be endorsed to provide the designated aggregate per location endorsement or equivalent on a form approved or requested by the County Risk Manager.

**6.1.6** Motor Vehicle Liability. The Contractor shall secure and maintain during the term of this Contract, motor vehicle coverage in the split limit amounts of no less than the amounts shown above per person, per occurrence for bodily injury and for property damage or a combined single limit of the amount shown above (including "Any Auto" Symbol 1 coverage), protecting itself, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle.

**6.1.7** Professional Liability. The Contractor shall ensure that it secures and maintains, during the term of this Contract, Professional Liability insurance with limits of no less than the amount shown above in respect only to the project(s) contemplated by its Contract. Such policy shall cover all the Contractor's or its Subcontractor's professional liabilities whether occasioned by the Contractor or its Subcontractors, or their agents or employees.

**6.1.7.1** If the Contractor fails to secure and maintain the professional liability insurance coverage required herein, the Contractor shall be liable to the County and agrees to indemnify, defend, and hold harmless the County against all claims, actions, losses or damages that would have been covered by such insurance.

**6.1.7.2** The Contractor must maintain a retroactive date prior to or equal to the effective date of this Contract. The Contractor shall purchase a Supplemental Extended Reporting Period ("SERP") with a minimum reporting period of not less than three (3) years in the event a Subcontractor's policy is canceled, not renewed, switched to occurrence form, or any other event which requires a purchase of SERP to cover a gap in insurance for claims which may arise under or related to this Contract. The Contractor's purchase of the SERP shall not relieve the Contractor of the obligation to provide replacement coverage. In addition, the Contractor shall require have the Subcontractor's carrier immediately inform the Contractor, and the County of Volusia's Risk Management Division and the Purchasing and Contracts Division of any contractual obligations that may alter its professional liability coverage under this Contract.

- 6.1.8** Pollution Liability. The Contractor shall obtain and maintain a pollution liability insurance policy with a limit of liability of no less than the amount(s) shown above on a per occurrence/aggregate basis for any Work or Services performed under this Contract including but not limited to environmental/pollution related services, including but not limited to, testing, design, consulting, analysis, other consulting work (whether self-performed or subcontracted), discharge, dispersal, release, seepage, migration or escape of smoke, vapors, soot fumes, acids, alkalis, toxic chemicals, liquid or gasses, waste materials, irritants, contaminants, pollutants into or upon land, atmosphere or any watercourse or body of water (including groundwater at or under or emanating arising from Work or Services performed under this Contract) and for all above-ground storage tanks, in-ground storage tanks, and other potentially hazardous materials, insuring the Contractor's liability for bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death, property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arise from Contractor's operation, and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by the Contractor. The County shall be named as additional insured.
- 6.1.9** Coverage's for professional and pollution liability shall be provided on an Occurrence form or a Claims Made form with a retroactive date equal to at least the first date of this Contract and with a three year reporting option beyond the expiration date of this Contract including any amendments to the Contract term. County shall be included as an additional named insured under the pollution liability insurance policy.
- 6.1.10** Primary and Excess Coverage. Any insurance required may be provided by primary and excess insurance policies.

## **6.2 Insurance Requirements**

### **6.2.1 General Insurance Requirements:**

- 6.2.1.1** All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of A- in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.
- 6.2.1.2** Approval by County of any policy of insurance shall not relieve Contractor from its responsibility to maintain the insurance coverage required herein for the performance of Work or Services by the Contractor or its Subcontractors for the entire term of this Contract and for such longer periods of time as may be required under other clauses of this Contract.

- 6.2.1.3** Waiver of Subrogation. The Contractor hereby waives all rights against the County and its Subcontractors to the extent of the risk coverage by any insurance policy required hereunder for damages by reason of any claim, demand, suit or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of this Contract. The Contractor shall require similar waivers from all its Subcontractors. This provision applies to all policies of insurance required under this Contract (including Workers' Compensation, and general liability).
- 6.2.1.4** County Not Liable for Paying Deductibles. For all insurance required by Contractor, the County shall not be responsible or liable for paying deductibles for any claim arising out of or related to the Contractor's business or any Subcontractor performing Work or Services on behalf of the Contractor or for the Contractor's benefit under this Contract.
- 6.2.1.5** Cancellation Notices. During the term of this Contract, Contractor shall be responsible for promptly advising and providing the County's Risk Management and the Purchasing and Contracts divisions with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the County under this Contract within two (2) business days of receipt of such notice or change.
- 6.2.1.6** For any on-site Work performed by or on behalf of Contractor on County property, the County shall be named as an additional insured or additional named insured subject to review and determination by County's Risk Manager on all policies required under this Contract.
- 6.2.1.7** Deductibles. For purposes of this Contract, Contractor shall not obtain an insurance policy with a deductible or self-insurance provision.

### **6.3 Proof of Insurance**

- 6.3.1** The Contractor shall be required to furnish evidence of all required insurance in the form of certificates of insurance, which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard and the expiration dates.
- 6.3.2** The Contractor shall furnish proof of insurance acceptable to the County prior to or at the time of execution of this Contract and the Contractor shall not commence Work or provide any Service until the Contractor has obtained all the insurance required under this Contract and such insurance has been filed with and approved by the County. Upon request from the County, the Contractor shall furnish copies of the following types of insurance policies and any changes or amendments thereto, immediately, to the County and County's Risk Management and Purchasing and Contracts Divisions, prior to the commencement of any contractual obligations. This Contract may be

terminated by the County, without penalty or expense to County, if at any time during the term of this Contract proof of any insurance required hereunder is not provided to the County.

**6.3.3** All certificates of insurance shall clearly indicate that the Contractor has obtained insurance of the type, amount and classification required by this Article. No Work or Services by Contractor or its Subcontractors shall be commenced until County has approved these policies or certificates of insurance. Further, the Contractor agrees that the County shall make no payments pursuant to the terms of this Contract until all required proof or evidence of insurance has been provided to the County This Contractor may be terminated by the County, without penalty or expense, if proof of any insurance required hereunder is not provided to the County.

**6.3.4** The Contractor shall file replacement certificates with the County at the time of expiration or termination of the required insurance occurring during the term of this Contract. In the event such insurance lapses, the County expressly reserves the right to renew the insurance policies at the Contractor's expense or terminate this Contract but County has no obligation to renew any policies.

**6.3.5** The provisions of this Article shall survive the cancellation or termination of this Contract.

#### **6.4 Bonding Requirements**

**6.4.1** The CM/GC and/or Trade Contractor shall furnish separate performance and payment bonds as security for the faithful performance and payment of all its obligations under the Contract Documents. These bonds shall be in amounts equal to the GMP and in such form as prescribed pursuant to §255.05 Florida Statutes and with such sureties as are acceptable to the County. The bonds shall become effective upon execution of this Contract and shall remain in effect for one (1) year beyond the date of the Certificate of Substantial Completion of the Work as a protection to the County against losses resulting from latent defects in materials or improper performance of work under the Contract, which may appear or be discovered during that period. The bonds shall provide one hundred percent (100%) coverage for CM/GC's or Trade Contractor's default on either performance or payment.

**6.4.2** The performance and payment bonds shall have as the surety thereon only such surety company or companies as are authorized to write bonds of such character and amount under the laws of the State of Florida and with an agent resident in the State of Florida. The Attorney-in-Fact, or other officer who signs such bonds for the surety company must file with such bonds a certified copy of its Power-of-Authority authorizing it to do so.

**6.4.3** Qualification of Sureties. The following requirements shall be met by surety companies furnishing performance, payment or any other type of bonds:

**6.4.3.1** The surety shall be rated "A" or better on the Financial Strength Rating (FSR) and Class "X" or better on the Financial Size Category by Best's Rating Center, published by A. M. Best Company. Financial Strength Rating of companies providing insurance for the project shall be "A-" or better.

**6.4.3.2** The surety shall also be listed on the U.S. Department of Treasury (Dept. Circular 570) entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

**6.4.3.3** The surety companies proposed by the CM/GC or Trade Contractor for the Project are subject to County's approval which approval. At any time after approval, if the County, for cause (such cause being defined as the filing for liquidation, appointment of receiver to manage said surety business, insolvency, filing petitions or applications for protection or liquidation under federal bankruptcy laws, or other causes adversely affecting the surety's ability to perform under its bonds), becomes dissatisfied with any surety or sureties then upon the bond(s), the CM/GC or trade Contractor shall, within fifteen (15) days after written notice from the County to do so, substitute acceptable bond(s) in such form and sum, and signed by such other surety or sureties as may be satisfactory to the County. The premiums on the bond(s) shall be paid by the CM/GC or Trade Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished acceptable bond(s) to the County.

## **ARTICLE 7A**

### **CM/GC's Compensation for Part A**

**7.1** The County will pay the CM/GC as total compensation for all services required in this Part A, Preconstruction Phase of the Project and as provided in Article 3, hereof, a fee of SIXTY-THREE THOUSAND ONE HUNDRED FORTY-ONE DOLLARS and ZERO CENTS (\$63,141.00).

**7.2** Payments for services performed under Part A of this Contract and in accordance with the requirements of Article 3, hereof, will be made after receipt of properly executed requests for payment as follows:

**7.2.1.** The CM/GC shall submit to the County a monthly statement for services rendered to the date of statement accompanied by such supporting data as required by the County. Within twenty (20) business days or twenty (25) business days if review by county representative if receipt by the County of the work for which the CM/GC has submitted the monthly statement, the



CM/GC shall be paid the unpaid balance of any money due for work covered by said statement less any disputed amounts. The CM/GC shall be notified of disputed amounts within twenty (20) business days of the receipt of the statement. All payments made by County shall be subject to the Florida Prompt Payment Act (Florida Statute §218.70).

- 7.2.2.** Upon satisfactory completion by the CM/GC and acceptance by the County of all services specified in Article 3, the CM/GC shall be paid the balance due under Section 3.12, hereof. Acceptance by the County shall be evidenced by the County's concurrence with the GMP and the execution of Part B of the Contract.

## **ARTICLE 8A**

### **Termination**

- 8.1 County's Right to Stop the Work.** The County shall have the right to stop the Work or a designated portion thereof, for major changes in design, because of non-conformance of the Work with the Plans and Specifications and shop drawings, or for such other reason as would make the continuance of the Work or a designated portion thereof no longer feasible. Notice of such action by the County shall be made in writing to the CM/GC and shall not restrict or limit in any way the remaining provisions of this Contract.
- 8.2 Termination by the County for Cause.** If the CM/GC fails to perform any of its obligations under this Contract, including any obligation it assumes to perform portions of the Work with its own forces, the County may give the CM/GC written notice of the deficiency and direct immediate corrective action. If the CM/GC fails to perform in accordance with such notice, within seven (7) days from the receipt of County's written notice, the County may perform the work involved and deduct the costs from funds due or to become due CM/GC. The CM/GC shall have the right, however, to make good any deficiencies or commence and continue to cure any default during the seven (7) day period following written notice.
- 8.2.1** If the CM/GC fails to furnish County with assurances satisfactory to the County evidencing the CM/GC's ability to complete the Work in compliance with all the requirements of the Contract Documents, or if it fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents or if it makes a general assignment for the benefit of its creditors approved by County Council prior to said assignment, or if a trustee or receiver appointed on account of its insolvency is unable to maintain progress, or if it refuses or fails to supply enough properly skilled workers or proper materials, or if it fails to make proper payment to Trade Contractors for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is guilty of a substantial violation of a provision of this Contract, then the County may, without prejudice to any right or remedy and after giving the CM/GC and its surety Ten (10) days' written notice, during which period the GM/GC fails to commence and continue to cure the violation, terminate the employment of the CM/GC and take possession of the Project site and of all materials, equipment, tools, construction equipment and machinery thereon and may finish the Project by whatever reasonable method the County may deem expedient. In the event of

such termination, the County shall reimburse the CM/GC for any unpaid and undisputed portion of the Cost of Work incurred by CM/GC under Article 6 (subject to the GMP) up to the time of termination. The CM/GC shall not be entitled to any additional payment of Fee. The CM/GC shall not be entitled to any compensation for County's use of such materials, equipment, tools, construction equipment and machinery. However, at the completion of the Work, such materials, equipment, tools, construction equipment and machinery which were not incorporated in the Project shall be returned to the CM/GC. The CM/GC shall not be entitled to additional compensation for damages, claims or reimbursement of any kind other than those specifically stated in this Section 8.2.1 in the event of termination under the terms therein.

**8.3 Termination by the County for Convenience.** If the County terminates this Contract other than pursuant to Section 8.2.1, the CM/GC shall be reimbursed for any unpaid portion of the Cost of Work which has been incurred up to the time of termination, plus the unpaid portion of the Fee earned up to the time of termination, plus Trade Contract and purchase order cancellation charges, if any, incurred by the CM/GC as a direct result of the termination. The County shall also pay to the CM/GC fair compensation, either by purchase or rental, at County's option, for any equipment used or retained by the County for completion of the Work. In case of such termination of the Contract, the County shall further assume and become liable for the obligations, commitments and unsettled claims that the CM/GC has previously undertaken or incurred in good faith in connection with the Project. The CM/GC shall, as a condition of receiving the payments referred to in this Section 8.3, execute and deliver all documents and take all steps, including the legal assignment of his contractual rights, as the County may require, for the purpose of fully vesting in the County the rights and benefits of the CM/GC under such obligations or commitments, and shall execute a complete waiver and release of the County.

**8.4 Termination by CM/GC.** If the Project is stopped in whole or a substantial part, through no act or fault of the CM/GC, for a period of thirty (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 material unavailable, or because of County's failure to make payment for work performed in accordance with the Contract Documents (unless the County is withholding payment as provided in Section 8.2.1), then the CM/GC may, upon ten (10) days' written notice to the County and the Program Manager, terminate this Contract and recover from the County payment for the unpaid and undisputed portion of the Cost of Work which has been incurred up to the date of termination, the unpaid portion of the Fee earned up to the date of termination, and any cancellation charges on existing obligations of the CM/GC related to the Project. The County shall have the right, however, to make any required payment or cure any default during the seven (7) day period following written notice and, in such event, neither the Contract nor the Work under the Contract shall be terminated. The CM/GC shall not be entitled to additional compensation for damages, claims or reimbursement of any kind other than those specifically stated in this Section 8.4 in the event of termination under the terms therein.

## ARTICLE 9A

### **CLAIMS AND DISPUTES**

**9.1 Claims.** Under this Contract the CM/GC shall not have the right to compensation to satisfy any claim for costs, liabilities, or debt of any kind whatsoever from any act or omission attributable to the County unless the CM/GC has provided notice to the County within twenty (20) days of the event giving rise to the claims and unless the detailed claim therefore is delivered to the County within sixty (60) days following the notice. The detailed claim shall include:

- 9.1.1 The date of the occurrence of the event giving rise to the claim and the date and manner of CM/GC's compliance with the notice requirements of this Article 9, and
- 9.1.2 The reasons upon which the CM/GC bases his claim, demonstrating thereby that the costs, liabilities or debts reflected in the claim are not already a part of the GMP and its compensation under the Contract and therefore specific relief is due it for the claim.
- 9.1.3 The County shall respond to the claim within twenty (20) days after receipt of a claim. In the event there is no resolution of the claim from that response, the CM/GC reserves his right to seek legal redress.
- 9.1.4 **Sovereign Immunity**. The County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity of limits of liability of the County beyond any statutory limited waiver of immunity of limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the County for damages regardless of the number or nature of claims in tort, contract or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

**9.2 Mediation.**

- 9.2.1 The parties to this Contract shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Contract in accordance with the provisions set forth in this Section. The CM/GC and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Contract and any applicable scope of services. Issues shall be escalated to successive management levels as indicated in Section 11.2.3 below.
- 9.2.2 If a dispute develops between the parties concerning any provision of this Contract, or the interpretation thereof, or any conduct by the other party under these contracts, and the parties are unable to resolve such dispute within five (5) days, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.
- 9.2.3 Upon issuance of a Dispute Notice, the Project Managers or designated representative(s) shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers or designated representative(s) shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative(s) within five (5) business days, the Project Managers or designated representative(s) shall escalate the dispute as indicated below.

Business Days	CM/GC's Representative	County Representative

5	CM/GC	Project Manager
10	CM/GC's Engagement Manager	County Engineer
15	CM/GC's Business Unit Manager or Designee	Chief Financial Officer

- 9.3 Formal Dispute Resolution.** At any point after issuance of a Dispute Notice under this section, either party may initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction. If litigation is prematurely commenced, it shall be stayed until the mediator makes the required certification.
- 9.4** The CM/GC shall carry on the Work and maintain the progress scheduled during any administrative or judicial proceeding, unless otherwise agreed by the CM/GC and the County in writing, and the County shall continue to make payments on undisputed pay requests or invoices to the CM/GC in accordance with the provisions of this Contract.
- 9.5** All claims, disputes and other litigation shall be determined under the judicial system of the State of Florida. Venue for litigation shall be Volusia County, Florida.
- 9.6 Truth in Negotiation.** CM/GC's signature on this Contract shall act as the execution of truth-in-negotiation certificate stating that wage rates, and other factual unit costs supporting the compensation set forth in this Contract are accurate, complete and current at the time of contracting and that it has disclosed to the County prior to the execution of this Contract all debts, fees or obligations owed to or pending before the County.

## ARTICLE 10A

### MISCELLANEOUS

- 10.1 Force Majeure.** Neither party will be liable for any failure or delay in the performance of its obligations under this Contract (and the failure or delay will not be deemed a default of this Contract or grounds for termination) if both of the following conditions are satisfied: (i) the failure or delay could not have been prevented by reasonable precautions, and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (ii) the failure or delay is caused, directly or indirectly, by reason of fire or other casualty, natural disaster, epidemic or accident; strikes or labor disputes; inability to procure raw materials, equipment, power or supplies; war, terrorism or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency or intergovernmental body other than a party hereto; or any other act or condition beyond the reasonable control of the non-performing party. Accordingly, the parties further agree that:
- 10.1.1** Upon the occurrence of an event which satisfies both of the above conditions (a "Force Majeure Event"), the non-performing party will be excused from any further performance of those obligations under this Contract affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

**10.1.2** Upon the occurrence of a Force Majeure Event, the non-performing party will notify the other party within two (2) business days of the failure, or as soon as possible after such failure or delay if the Force Majeure Event prevents compliance within two (2) business days, of the occurrence of a Force Majeure Event and will describe in reasonable detail the nature of the Force Majeure Event.

**10.1.3** In the event of a Force Majeure Event, the time for performance by the parties under the applicable Statement of Work shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of this Contract.

**10.2 Claims Notice.** The CM/GC shall timely report in writing to the County's Director of Risk Management any incident which it believes might result in claims under any of the coverages mentioned herein.

Name: Risk Manager  
Address: 230 North Woodland Boulevard, Suite 250  
DeLand, Florida 32720  
Telephone: 386-736-5963  
Fax: 386-822-5006

**10.3 Successors and Assigns.** County and CM/GC each binds itself and its partners, successors and successors in interest, affiliates, executors, administrators, assigns and legal representatives to the other party to this Contract and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, contracts and obligations of this Contract. Neither County nor CM/GC shall assign, sublet or transfer any rights under or interest in this Contract without the written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Contract.

**10.4 Additional Rights and Remedies.** The rights and remedies of the County provided for under this Contract are in addition to any other rights and remedies provided by law; the County may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, with-holding, recoupment, or counterclaim, either during or after performance of this Contract.

**10.5 MBE.** This Contract is entered into by the County and CM/GC pursuant to the minority business enterprise procurement goals under Section 287.09451, F.S.

## **10.6 Local Government Policies**

**10.6.1 Public Records Law.** CM/GC acknowledges County's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes (the "Public Records Act"), to release public records to members of the public upon request. CM/GC acknowledges that County is required to comply with the Public Records Act, in the handling of the materials created under this Contract and that said statute controls the terms of this Contract. CM/GC agrees to comply with all provisions of such Public Record Act as they apply to the CM/GC.

**10.6.1.1** In the event a third party makes a public records request to County for any item which has been marked by CM/GC as confidential or a trade secret, County has refused disclosure and the third party files suit to require disclosure, CM/GC recognizes County is required to submit any requested item to the court for

inspection in camera as set forth in Section 119.07(1)(e), Florida Statutes (2009). CM/GC further acknowledges that Section 119.12, Florida Statutes (2009) states:

*If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.*

**10.6.1.2** Should a court, based upon Section 119.12, Florida Statutes (2009), or its successor, assess and award costs of enforcement against County arising from any obligation of County under this Section, CM/GC agrees at its expense to indemnify, and hold harmless County and its elected officials, appointed officials, officers, agents and employees.

**10.6.2 Financial Records.** CM/GC agrees to maintain such financial records and other records as may be prescribed by the County or by applicable federal and state laws, rules, and regulations. County shall have the right to audit the books, records, and accounts of CM/GC that are directly related to the Contract. CM/GC shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Contract. CM/GC shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for a minimum period of three (3) years after termination of this Contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings; provided, however, that it shall be County's responsibility to notify CM/GC of the pendency of such audit. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry.

**10.6.3 Payments Subject to Appropriation.** Notwithstanding any other term or provision of this Contract, the continuation of this Contract beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. If at any time funds are not appropriated for the Services and Deliverables provided or to be provided under this Contract, cancellation shall be accepted by CM/GC with thirty (30) days prior written notice, but failure to give such notice shall be of no effect. Termination by the County due to non-appropriation shall be without a termination charge by CM/GC. County shall not be obligated to pay CM/GC under this Contract beyond the date of termination. CM/GC shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation.

**10.6.4 No Contingent Fees.**

**10.6.4.1** Neither CM/GC, nor any parent or subsidiary corporation of CM/GC has employed or retained any company or persons, other than a bona fide employee working solely for CM/GC, to solicit or secure this Contract and that they have not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for CM/GC, any fee, commission, percentage, gift, or other consideration contingent upon award of this Contract. For the breach or violation of this provision, County shall have the right to terminate this Contract at its discretion, without liability and to deduct from the Contract Price, or otherwise recover, the full amount of such fee,

commission, percentage, gift, or consideration.

- 10.6.4.2** For the breach or violation of Section 16.4, the County shall have the right to terminate this Contract without liability and, at its discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.
- 10.6.5 Truth in Negotiation.** CM/GC's signature on this Contract shall act as the execution of truth-in-negotiation certificate stating that wage rates, and other factual unit costs supporting the compensation set forth in this Contract are accurate, complete and current at the time of contracting and that it has disclosed to the County prior to the execution of this Contract all debts, fees or obligations owed to or pending before the County.
- 10.6.6 Changes Due to Public Welfare.** The County and CM/GC agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law or Ordinance.
- 10.6.7 Compliance with Applicable Laws.** CM/GC shall perform its obligations hereunder in accordance with all applicable federal, state and local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Contract. CM/GC shall protect and indemnify County and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by CM/GC, its representatives, Trade Contractors, professional associates, agents, servants, or employees. Additionally, CM/GC shall obtain and maintain at its own expense all applicable licenses and permits to conduct business pursuant to this Contract from the federal government, State of Florida, County of Volusia, or municipalities when legally required and maintain same in full force and effect during the term of this Contract.
- 10.6.8 Drug Free Workplace.** The County of Volusia is a drug-free and smoke-free workplace. CM/GC agrees that it shall provide a drug-free environment to its personnel during the terms of the Contract and shall comply, subject to the prior receipt, with the County's policies on drug-free and smoke-free work place during the term of this Contract.
- 10.6.9 Background Checks.** CM/GC and its Trade Contractors understand that certain areas of the County's premises may not be available to CM/GC or Trade Contractor personnel without background checks and that such access may be required to perform the Services contemplated by this Contract.
- 10.6.10 Employment of Illegal Aliens.** CM/GC certifies that it does not knowingly or willing and shall not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.
- 10.6.11 Nondiscrimination and Americans with Disabilities Act.** CM/GC shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Contract. CM/GC agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any Services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable

regulations, guidelines, and standards. In performing under this Contract, CM/GC agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for work under this Contract because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, 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, gender, sexual orientation, age, national origin, political affiliation, or disability.

- 10.7 E-VERIFY.** The Contractor warrants that it has duly enrolled in the E-Verify system of the U. S. Department of Homeland Security (“E-Verify System”) and is party to a memorandum of understanding authorizing use of that system. The Contractor shall utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the Contractor on or after the effective date of this Contract and thereafter during the remaining term of the Contract. The Contractor shall certify by notarized affidavit to the County Project Manager on the first day of each month that the Contractor remains in compliance with this section and the Executive Order 11-116 of the Governor of the State of Florida (“Executive Order”). The Contractor covenants and agrees that if it is found in violation of this section or the Executive Order, such violation shall be a material breach of this Contract and Contractor shall indemnify, defend and hold harmless the County from any fines or penalties levied by a government agency, including the loss or repayment of grant funds by the County.
- 10.8 Controlling Law.** This Contract is to be governed by the laws of the State of Florida. Venue for any litigation between the parties to this Contract shall be in the County of Volusia, Florida and any trial shall be non-jury. Each party agrees to bear its own costs and attorneys fees relating to any dispute arising under this Contract.
- 10.9 Modifications to Contract.** This Contract and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto.
- 10.10 Entire Contract.** This Contract, together with Part A, any exhibits, schedules, attachments and amendments thereto constitute the entire Contract between County and CM/GC and supersede all prior written or oral understandings.

*Remainder of Page Intentionally Left Blank*



IN WITNESS WHEREOF, the parties have made and executed this Contract for Contracting Services for Preconstruction Phase Services, Part A, the day and year below written.

**CONTRACTOR:** Ajax Building Corporation

(SEAL)

BY: \_\_\_\_\_  
(Signature)

BY: \_\_\_\_\_  
Corporate Officer & Title

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_ Date: \_\_\_\_\_

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**COUNTY OF VOLUSIA**

(SEAL)

BY: \_\_\_\_\_  
Frank T. Bruno, Jr.  
County Chair

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_ Date: \_\_\_\_\_  
James T. Dinneen  
County Manager

County Council Date: 02/02/2012

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Quality Builds Its Own Reputation

November 6, 2011

Laura E. Laser  
Volusia County Engineering  
Fourth Floor, Room 402  
123 West Indiana Avenue  
DeLand, FL 32720-4262

Subject: Volusia County Booking and Receiving Additions/Renovations  
RE: Preconstruction Services Fee Part A

Laura,

We are pleased to present our Fee Proposal for Preconstruction Services in accordance with Part A of CM/GC services agreement on the above referenced project. The lump sum fee for Preconstruction Services is \$63,141. See attached for breakdown.

We will provide 3 estimates during the design phase. One estimate will be provided at the end of the Schematic phase; the Design Development phase and during the Working Drawings phase. The GMP will then be established after bids are received on the 100% Construction Documents. In addition to the estimates listed above we will attend all required meetings during the design phase and will include schedule, constructability and other relevant review information into each deliverable.

Upon submittal/approval of GMP, part B of CM/GC agreement will be executed and the OH&P will be established at 5% of the total cost of work.

Please do not hesitate to contact me if you have any questions. We look forward to a very successful project.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Neuman", is written over a light blue horizontal line.

Lon D. Neuman  
Regional Manager  
Ajax Building Corporation

File: 1.1C  
XC: Bill Byrne  
Derek Gamble

EXHIBIT "A"

Jacksonville Office  
10365 Hood Road South, Suite 203  
Jacksonville, FL 32257

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CG C042112

**Volusia County  
Booking and Receiving Additions/Renovations  
Fee Proposal Part A**

<b>Volusia Booking and Receiving Fee Proposal for Preconstruction Phase Services and OH&amp;P</b>				
PROJECT CONSTRUCTION BUDGET	\$4,200,000			
PRECONSTRUCTION PHASE FEE (Article 6A)		\$63,141		
General Conditions/General Requirements	TBD upon submittal of GMP			
OVERHEAD & PROFIT	5% of total Cost of Work established in GMP			

## PRECONSTRUCTION PHASE FEE

11/6/2011

I. CONCEPTUAL and SCHEMATICS DESIGN					
TITLE	WEEKS	HOURS	RATE	MULT.	COST
OPERATIONS MANAGER	2	12	\$88.94	1.46	\$3,115
PROJECT MANAGER	1	12	\$49.04	1.49	\$877
OFFICE ADMINISTRATOR	1	2	\$20.67	1.54	\$64
CHIEF ESTIMATOR	2	8	\$50.48	1.46	\$1,183
ESTIMATOR	2	24	\$36.06	1.46	\$2,535
					\$7,774
		UNIT	UNIT COST		
SCHEDULING (materials)		1	\$75.00		\$75
OFFICE SUPPLIES		1	\$250.00		\$250
EXPRESSAGE		1	\$125.00		\$125
PHONE		1	\$250.00		\$250
DRAWING REPRODUCTIONS (10 Sheets @ \$1.55 & 30 pgs. @ .085 + tax )		10	\$18.23		\$182
CONCEPTUAL/SCHEMATICS TOTAL					\$8,656
II. DESIGN DEVELOPMENT					
TITLE	WEEKS	HOURS	RATE	MULT.	COST
OPERATIONS MANAGER	2	14	\$88.94	1.46	\$3,634
PROJECT MANAGER	1	14	\$49.04	1.49	\$1,023
GENERAL SUPERINTENDENT	1	6	\$69.71	1.47	\$613
PROJECT ENGINEER	0	6	\$27.40	1.53	\$0
OFFICE ADMINISTRATOR	1	6	\$20.67	1.54	\$191
CHIEF ESTIMATOR	2	8	\$50.48	1.46	\$1,183
ESTIMATOR	2	40	\$36.06	1.46	\$4,226
					\$10,870
		UNIT	UNIT COST		
SCHEDULING (materials)		1	\$50.00		\$50
EXPRESSAGE		1	\$150.00		\$150
PHONE		1	\$250.00		\$250
DRAWING REPRODUCTIONS (ALLOWANCE) (150 Sheets @ \$1.55 & 250 pgs. @ .085 + tax )		10	\$255.24		\$2,552
DESGN DEVELOPMENT TOTAL					\$13,873

## PRECONSTRUCTION PHASE FEE

11/6/2011

III. WORKING DRAWINGS and REDI CHECK					
TITLE	WEEKS	HOURS	RATE	MULT.	COST
OPERATIONS MANAGER	2	10	\$88.94	1.46	\$2,596
PRECONSTRUCTION MANAGER	1	10	\$69.71	1.46	\$1,017
PROJECT MANAGER	2	20	\$49.04	1.49	\$2,923
PROJECT ENGINEER	0	16	\$27.40	1.53	\$0
OFFICE ADMINISTRATOR	1	8	\$20.67	1.54	\$255
GENERAL SUPERINTENDENT	1	10	\$69.71	1.47	\$1,022
SUPERINTENDENT	1	30	\$50.96	1.48	\$2,258
CHIEF ESTIMATOR	2	8	\$50.48	1.46	\$1,183
ESTIMATOR	2	40	\$36.06	1.46	\$4,226
					\$15,480
		UNIT	UNIT COST		
MEETING ROOM FOR REDI CHECK		4	\$250.00		\$1,000
SCHEDULING (materials)		1	\$50.00		\$50
OFFICE SUPPLIES		1	\$250.00		\$250
EXPRESSAGE		1	\$225.00		\$225
PHONE		1	\$250.00		\$250
DRAWING REPRODUCTIONS (ALLOWANCE) (250 Sheets @ \$1.55 & 400 pgs. @ .085 + tax)		5	\$451.01		\$2,255
WORKING DRAWING TOTAL					\$19,510
IV. BIDDING/GMP PHASE					
TITLE	WEEKS	HOURS	RATE	MULT.	COST
OPERATIONS MANAGER	2	10	\$88.94	1.46	\$2,596
PROJECT MANAGER	2	40	\$49.04	1.49	\$5,846
PROJECT ENGINEER	0	40	\$27.40	1.53	\$0
GEN. SUPERINTENDENT	2	5	\$69.71	1.47	\$1,022
PROJ. SUPERINTENDENT	2	16	\$50.96	1.48	\$2,409
OFFICE ADMINISTRATOR	2	6	\$20.67	1.54	\$382
PROJECT ADMINISTRATOR	1	20	\$16.00	1.60	\$513
CHIEF ESTIMATOR	2	8	\$50.48	1.46	\$1,183
ESTIMATOR	2	40	\$36.06	1.46	\$4,226
					\$19,952
		UNIT	UNIT COST		
MEETING ROOM FOR PREBIDS		0	\$250.00		\$0
SCHEDULING (materials)		TO BE INCLUDED AS REIMBURSABLE JOB COST			
OFFICE SUPPLIES		1	\$400.00		\$400
EXPRESSAGE		1	\$500.00		\$500
PHONE		1	\$250.32		\$250
DRAWING REPRODUCTIONS		TO BE INCLUDED AS REIMBURSABLE JOB COST			
BIDDING/GMP PHASE TOTAL					\$21,102

## PRECONSTRUCTION PHASE FEE

11/6/2011

<b>SUMMARY</b>					
CONCEPTUAL/SCHEMATICS PHASE					\$8,656.28
DESIGN DEVELOPMENT					\$13,872.61
WORKING DRAWINGS					\$19,509.98
BIDDING/GMP PHASE					\$21,102.13
<b>TOTAL</b>					<b>\$63,141.00</b>
CHECK					\$63,141.00

LABOR BURDEN BREAKDOWN

ANNUAL SALARY	\$210,000	\$185,000	\$102,000	\$78,000	\$57,000	\$145,000	\$106,000	\$67,000	\$33,280	\$105,000	\$75,000	\$45,000	\$43,000	\$72,000
	PROJECT EXECUTIVE	OPERATIONS MANAGER	PROJECT MANAGER	ASSISTANT PROJ. MAN.	PROJECT ENGINEER	GENERAL SUPERINTENDENT	PROJECT SUPER.	ASST. SUPER.	PROJECT ADMIN.	CHIEF ESTIMATOR	PROJECT ESTIMATOR	PROJECT ACCOUNTANT	OFFICE ADMIN.	SAFETY DIRECTOR
STATE UNEMPLOYMENT	1.435%	1.435%	1.435%	1.435%	1.435%	1.435%	1.435%	1.435%	1.435%	1.435%	1.435%	1.435%	1.435%	1.435%
FEDERAL UNEMPLOYMENT	0.213%	0.213%	0.213%	0.213%	0.213%	0.213%	0.213%	0.213%	0.213%	0.213%	0.213%	0.213%	0.213%	0.213%
WORKER'S COMP INS.	8.805%	8.805%	8.805%	8.805%	8.805%	8.805%	8.805%	8.805%	8.805%	8.805%	8.805%	8.805%	8.805%	8.805%
MEDICARE	1.450%	1.450%	1.450%	1.450%	1.450%	1.450%	1.450%	1.450%	1.450%	1.450%	1.450%	1.450%	1.450%	1.450%
SOCIAL SECURITY	6.200%	6.200%	6.200%	6.200%	6.200%	6.200%	6.200%	6.200%	6.200%	6.200%	6.200%	6.200%	6.200%	6.200%
SUBTOTAL	18.103%	18.103%	18.103%	18.103%	18.103%	18.103%	18.103%	18.103%	18.103%	18.103%	18.103%	18.103%	18.103%	18.103%
BASIC LIFE	1.000%	1.000%	1.000%	1.000%	1.000%	1.000%	1.000%	1.000%	1.000%	1.000%	1.000%	1.000%	1.000%	1.000%
DISABILITY	0.360%	0.360%	0.360%	0.360%	0.360%	0.360%	0.360%	0.360%	0.360%	0.360%	0.360%	0.360%	0.360%	0.360%
HEALTH INSURANCE	5.516%	6.262%	11.357%	14.851%	16.814%	7.989%	9.042%	14.304%	22.788%	9.128%	12.779%	18.889%	18.605%	11.111%
VACATION	6.400%	6.400%	6.400%	6.400%	6.400%	6.400%	6.400%	6.400%	6.400%	6.400%	6.400%	6.400%	6.400%	6.400%
SICK/PERSONAL	1.700%	1.700%	1.700%	1.700%	1.700%	1.700%	1.700%	1.700%	1.700%	1.700%	1.700%	1.700%	1.700%	1.700%
HOLIDAY	3.210%	3.210%	3.210%	3.210%	3.210%	3.210%	3.210%	3.210%	3.210%	3.210%	3.210%	3.210%	3.210%	3.210%
TRAINING & EDUCATION	3.000%	3.000%	3.000%	3.000%	3.000%	3.000%	3.000%	3.000%	3.000%	3.000%	3.000%	3.000%	3.000%	3.000%
RESOURCES/SUPPORT ST	2.000%	3.000%	1.000%	1.000%	0.000%	2.000%	2.000%	0.000%	1.000%	2.000%	0.000%	0.000%	0.000%	0.000%
RETIREMENT	2.890%	2.890%	2.890%	2.890%	2.890%	2.890%	2.890%	2.890%	2.890%	2.890%	2.890%	2.890%	2.890%	2.890%
SUBTOTAL	26.076%	27.822%	30.917%	34.411%	35.374%	28.549%	29.602%	32.864%	42.348%	29.688%	31.339%	37.449%	37.165%	29.671%
GRAND TOTAL	44.179%	45.925%	49.020%	52.514%	53.477%	46.652%	47.705%	50.967%	60.451%	46.486%	48.137%	54.247%	53.963%	47.774%
Average			50.107%											

