

SOUTH FLORIDA STATE COLLEGE
CONTINUING SERVICES AGREEMENT
FOR CONSTRUCTION MANAGEMENT AT-RISK SERVICES FOR CONSTRUCTION PROJECTS

This agreement (hereinafter referred to as the "Agreement" or "Contract") is dated this _____ day of _____, 2024 and is made between The District Board of Trustees of South Florida State College, Florida, (hereinafter referred to as the "College") and _____, located at _____
(Hereinafter referred to as "Construction Manager"), (hereinafter collectively referred to as the "Parties").

WHEREAS, College issued Request for Qualifications 23-02 (hereinafter referred to as the "RFQ") and Construction Manager was selected qualified, and;

WHEREAS, College and Construction Manager seek to engage in a Continuing Services Contract Whereby Construction Manager provides Construction Management At-Risk Services for Construction Projects (hereinafter referred to as the "Services" or "Project") for the College.

THEREFORE, the Parties hereto intending to be bound hereby agree as follows:

The following shall constitute the contract agreement in hierarchal order:

- The "Continuing Services Agreement for Construction Management At-Risk Services for Construction Projects"
- College's Requests for Quotations, Construction Manager's Proposals, and Purchase Orders made or issued pursuant by the College, any related plans or specifications for any such Quotation or Purchase Order
- South Florida State College RFQ #23-02
- Construction Manager's response to RFQ #23-02 and
- Any additional written contracts made and entered into between the College and the Construction Manager on a project specific basis

As provided for above, the execution of this Agreement governs the rights and obligations of the College and Construction Manager for purposes of the Scope of Work described herein and all work undertaken by Construction Manager for College pursuant to this Agreement and that procedure during the term and any extension of the term of this Agreement.

The Construction Manager accepts the relationship of trust and confidence established between Construction Manager and College with execution of this Agreement; Construction Manager covenants with the College to furnish his best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the College; Construction Manager agrees to furnish efficient business administration and superintendence and use best efforts to complete the assigned project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the College. The parties agree that the statements recited above are true and correct and those statements, including the precedence of documents, are herein incorporated by reference.

1. **Projects.** The Project(s) for which the Construction Manager is being hired to perform services under this Agreement are individual construction projects which may only include those projects for which the estimated construction cost of each individual project under the contract which are less than Four Million Dollars (\$4,000,000), or such greater amount(s) as may hereinafter be permitted by Florida Statutes (hereinafter collectively referred to in this Agreement as "Project".) The Construction

Manager agrees that this contract form shall be applicable to all projects which do not exceed \$200,000. In the event that any single project equals or exceeds \$200,000 in cost then the Construction Manager agrees, at the College's request, to execute a separate "long form" construction manager at risk contract on the College's customary form.

The parties acknowledge and agree that this is a non-exclusive Construction Manager Continuing Services Agreement and the College may enter into other agreements for the performance of similar services as deemed in the best interests of the College.

2. **Construction Team and Extent of Agreement.** The Construction Manager agrees to furnish its best skill and judgment and to cooperate with the Architect/Engineer(s) in furthering the interests of the College. The Construction Manager agrees to furnish efficient business administration for the Project, including daily summary logs and photographs, and to manage, supervise, and complete the Project in an expeditious and economical manner consistent with the interests of the College.

The Construction Team. The Construction Manager, the College, and, if applicable, the Architect/Engineer(s) (the "Construction Team") will work as a team through construction completion. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design.

Ownership of Documents. The Construction Documents are and shall remain the property of the College and the College shall retain all common law, statutory and other reserved rights with respect thereto. The Construction Manager is granted a limited license to use and reproduce, and to permit its subcontractors to use and reproduce, applicable portions of the Drawings and Specifications and other documents prepared by the Architect/Engineer to and for use in the execution of the Work under the Construction Documents.

3. **Guaranteed Maximum Price.** On selected projects which do not exceed \$4,000,000, the College shall provide a summary of work to be performed which will afford the Construction Manager the opportunity to submit a formal quotation for the work which shall be a Guaranteed Maximum Price ("GMP"). The Construction Manager shall respond to the request with the information sought within a reasonable period of time specified by the College.

The "Guaranteed Maximum Price" (GMP) includes the Cost of the Work required by the Construction Documents and the Construction Manager's fee. The GMP will be established based on design documents for each Project assigned under this Agreement. The GMP is subject to modification for approved changes in the Work which must comply with the Agreement terms, including, but not limited to, the requirements set forth in the Article entitled "Changes in the Work" hereof. College's prior written approval shall be required for modification to GMP line items after it is accepted by the College. As described herein, the GMP in its totality consists of the Cost of the Work plus the Construction Manager's Fee, as either may be amended on the terms set forth in the Article entitled "Changes in the Work."

Advertisement and Competitive Bidding Procedures. During the Project, without assuming responsibilities of the Architect-Engineer, the Construction Manager shall be responsible for complying with the advertising and competitive bidding procedures applicable to College construction projects, including but not limited to, invitations for bids or requests for proposal when applicable, for all procurements of long lead items, materials and services, and for Subcontractor contracts. Accordingly, such solicitations shall be prepared and completed by the construction manager in accordance with the following guidelines:

- a. For contracts up to \$14,999.99, a Contract may be executed with the firm whose proposal the Construction Manager determines best meets the needs of the Project. For contracts not exceeding \$1,000.00, the Construction Manager has the option to approve proposals for work without a confirming written proposal. For contracts exceeding \$1,000.00, the accepted proposal shall be confirmed by a written proposal of the firm defining the scope and quality of work to be provided. For contracts exceeding or projected to exceed \$15,000 but not \$65,000, the Construction Manager may execute a contract with the firm whose proposal, in the Construction Manager's best judgment, best meets the needs of the Project. The Construction Manager shall first request at least three (3) firms to submit written quotations based on a written drawings and/or specification. A tabulation of the results shall be furnished to the Owner along with copies of each written proposal. The Construction Manager shall engage the firm who is qualified and submits the lowest responsive proposal.
- b. For contracts exceeding or projected to exceed \$65,000, the Construction Manager shall advertise the work in a manner reasonably calculated to reach qualified contractors at least 21 calendar days prior to the established bid opening date. These proposals shall be based on approved plans and specifications. Bids shall be received and opened publicly at the location, date and time established in the bid advertisement. If the location, date or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made, to all persons who are registered to receive any addenda to the plans and specifications. The Owner may, in its sole discretion, require that any bid openings by the Construction Manager be conducted publicly with not less than seven days' public notice. College shall have the right to specify the place of the bid opening. The Construction Manager shall engage the firm who is pre-qualified and submits the lowest responsive proposal.

In the event of a valid emergency (such as an immediate danger to the public, an immediate danger of loss of public or private property, or an interruption in the delivery of an essential government/educational service) the Construction Manager may request a waiver from these requirements from the Owner, who may approve or deny at its sole discretion.

Work may not be divided for the purpose of evading these requirements.

4. **Contingencies.** For projects exceeding fifteen thousand dollars (\$15,000), a College and Construction Manager agreed upon contingency percentage shall be established. The contingency percentage shall be separately stated in the GMP and calculated as a percentage of the construction costs. No Construction Manager Fee shall be charged against the contingency. This contingency shall reflect the estimated costs associated with unknown conditions that are common in remodeling projects. The use of the contingency is subject to the College's prior written approval through the execution of Construction Change Directives. All contingency balances shall revert back to the College at the end of the project.
5. **Employees and Subcontractors.** Prior to commencing the work on any assigned project, the Construction Manager shall furnish a written list of all subcontractors and suppliers to College along with evidence of licensure when required by law. The College shall have the right to make a reasonable objection to any subcontractor or supplier. In the event of an objection by the College, the Construction Manager shall use an alternate subcontractor or supplier reasonably acceptable to College. Construction Manager shall not change subcontractors or suppliers previously selected without advance written notice to, and approval from, College. Construction Manager shall employ

or subcontract with only skilled and qualified personnel who shall maintain a neat and orderly appearance.

6. **Supervision and Coordination of College's Subcontractors and Employees.** The College reserves the right to contract with other subcontractors on projects for which the Construction Manager is responsible. The Construction Manager shall not be responsible for work performed by the College's subcontractors and College's employees. The Construction Manager shall coordinate subcontractors under agreement with the College and employees of the College as may be specified by the College.
7. **No Improper Use.** The Construction Manager will not use, nor suffer or permit any person to use in any manner whatsoever, the College's facilities for any improper, immoral or offensive purpose, or for any purpose in violation of any federal, state, county or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. In the event of any such violation by the Construction Manager, or if the College or its authorized representative shall deem any conduct on the part of the Construction Manager to be objectionable or improper, the College shall have the right to suspend the contract of the Construction Manager. Should the Construction Manager fail to correct any such violation, conduct or practice to the satisfaction of the College within twenty-four (24) hours after receiving notice of such violation, conduct or practice, such suspension will continue until the violation is cured. The Construction Manager further agrees not to commence operation during the suspension period until the violation has been corrected to the satisfaction of the College.
8. **Submittals and Substitutions.** College's advance approval in writing of any substitution of products or materials from specifications shall be required in each instance.
9. **Changes in the Project.** College shall have the right at any time during the progress of the work to change the work. Promptly after being notified of a change, Construction Manager shall submit an itemized estimate of any cost or time increase or savings it foresees as a result of the change. Except in an emergency endangering life or property, or as expressly set forth herein, no addition or changes to the work shall be made except upon written order of College, and College shall not be liable to the Construction Manager for any increased compensation without such written order. No officer, employee or agent of the College is authorized to direct any extra or changed work orally. A Construction Change Directive and/or a Change Order shall be issued and executed promptly after an agreement is reached between Construction Manager and College concerning the requested changes. Construction Manager shall promptly perform changes authorized by duly executed Change Order(s). The contract amount and contract time shall be adjusted in the Change Order in the manner as the Parties shall mutually agree.
10. **Cleanup.** Construction Manager agrees to keep the project site safe and clean at all times. The project site shall be broom cleaned and all debris, rubbish and waste materials arising out of the work shall be disposed of at the end of each day. At the completion of the work, Construction Manager shall remove all debris, rubbish and waste materials from and about the project site, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the project site clean and ready for occupancy by College.
11. **Compliance with Laws.** Construction Manager must provide proof of a valid State of Florida General Contractor License and proof of valid State of Florida Subcontractor's licenses for all subcontractors performing work on projects. College will pay for all permits and fees, including impact fees or inspection fees applicable to the work. Construction Manager is not responsible for paying for permits, but is responsible for acquiring all required permits. Construction Manager agrees to comply,

at its own expense, with all federal, state and local laws, codes, statutes, rules, regulations and requirements applicable to the project(s), including, but not limited to those dealing with taxation, worker's compensation, equal employment and safety (including the Trench Safety Act, Chapter 553 Florida Statutes). If Construction Manager observes that any contract document is at variance therewith, it shall promptly notify College.

12. **Warranty.** Construction Manager shall obtain and assign to College all express warranties given to Construction Manager or any subcontractors by any materialmen supplying materials, equipment or fixtures to be incorporated into the project. Construction Manager warrants to College that any materials and equipment furnished under the contract documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions for the applicable manufacturers, fabricators, suppliers, or processor except as otherwise provided for in the contract document. If, within one (1) year after final completion, any work is found to be defective or not in conformance with the contract documents, Construction Manager shall correct it promptly after receipt of written notice from College. Construction Manager shall also be responsible for and pay for replacement or repair of adjacent materials or work, which may be damaged as a result of such replacement or repair. These warranties are in addition to those implied warranties to which College is entitled as a matter of law.
13. **Tests and Inspections.** All tests and inspections shall be performed in accordance with the State Requirements for Educational Facilities (SREF 2014 and any subsequent amendments thereto). All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to the College.
14. **Protection of Work.** Construction Manager shall fully protect the work from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. If Construction Manager or any one for whom Construction Manager is legally liable is responsible for any loss or damage to the work, or other work, property or materials of College or College's separate contractors, Construction Manager shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Construction Manager.

Construction Manager shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Construction Manager subject any part of the work or adjacent property to stresses or pressures that will endanger it.

Construction Manager shall not disturb any benchmark established by the College with respect to the project. If Construction Manager, or its subcontractors, agents or anyone for whom Construction Manager is legally liable, disturbs the College's benchmarks, Construction Manager shall immediately notify College. The College shall re-establish the benchmarks and Construction Manager shall be liable for all costs incurred by College associated therewith.

15. **Emergencies.** In the event of an emergency affecting the safety or protection of persons or the work or property at the project site or adjacent thereto, Construction Manager, without special instruction or authorization from College is obligated to act to prevent threatened damage, injury or loss. Construction Manager shall give the College written notice within forty-eight (48) hours after the occurrence of the emergency, if Construction Manager believes that any significant changes in the work or variations from the contract documents have been caused thereby. If the College determines that a change in the contract documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Construction Manager fails to provide the forty-eight (48) hour written notice noted

above, the Construction Manager shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the contract amount or an extension to the contract time.

16. **Bonds.** Performance and Payment Bonds shall be required for any projects in excess of two hundred thousand dollars (\$200,000). On projects that cost less than two hundred thousand dollars (\$200,000), the College shall have the right to require the issuance of a performance and payment bond, but shall also have the right to waive such requirement in the College's sole discretion.

When bond is required, it shall be furnished by the Construction Manager prior to commencing performance, for the full amount of the project which shall act as a security guaranteeing the performance of the Construction Manager's work and the payment by the Construction Manager to any person or entity providing labor or materials in connection with each construction or renovation project performed by the Construction Manager.

If the surety issuing any bond furnished by the Construction Manager suffers the filing of a petition for relief in bankruptcy, becomes insolvent, its right to do business in the State of Florida is terminated or ceases doing business in the State of Florida, then, in such event the Construction Manager shall within five (5) business days thereafter PROVIDE College with a substitute bond and surety both of which shall be subject to the College's approval.

17. **Payments.** The College shall pay the Construction Manager for the performance of College accepted work pursuant to the quoted price offered by the Construction Manager in the response to the specific Request for Quotation. Generally, the Construction Manager will be paid upon completion; however, for work in excess of thirty (30) days, the Construction Manager may indicate on his response to the Request for Quotation the desire to receive progress payments. See Section 18 for progress payment provisions. Before final payment shall be made, Construction Manager must provide College with a fully executed, College acceptable Release and Affidavit, as described in Paragraph 18, below.

College may decline to approve any Application for Payment, or portions thereof, because of defective or incomplete work, outstanding punch list items, subsequent discovered evidence or subsequent inspections. The College may nullify the whole or any part of any approval of payment previously issued and College may withhold any payments otherwise due Construction Manager under this agreement or any other agreement between College and Construction Manager, to such extent as may be necessary in the College's opinion to protect it from loss because of (a) defective work not remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims; (c) failure of Construction Manager to make payment properly to subcontractors or for labor, materials, or equipment; (d) reasonable doubt that the work can be completed for the unpaid balance of the contract amount; (e) reasonable indication that the work will not be completed within the contract time; (f) unsatisfactory prosecution of the work by the Construction Manager; or (g) any other material breach of the contract documents. If any conditions described are not remedied or removed, the College may, after three (3) day's written notice, rectify the same at Construction Manager's expense. College also may offset against any sums due Construction Manager the amount of any liquidated or un-liquidated obligations of Construction Manager to College, whether relating to or arising out of this Agreement or any other Agreement between Construction Manager and College.

18. Progress Payment Provisions for Proposals Totaling Less Than \$200,000.

- A. **SCHEDULE OF VALUES.** At the time of the submission of the Proposal to be entered into in furtherance of the parties' Continuing Contract, the Construction Manager shall prepare and submit to the College a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the Contract Price. The schedule of values shall govern payment terms for the work if it is accepted in writing by the College.
- B. **PAYMENTS**
- i. Monthly Statements - The Construction Manager shall submit to the College a statement, sworn to, showing in detail all monies paid out, costs accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's Fees then due. This data shall be attached to the Partial Pay Request form. Ten percent (10%) retainage shall be held on all payments for all items and on all payments for Subcontractors and suppliers. When the Work is fifty percent (50%) complete, the College may, in consultation with the Architect-Engineer (if applicable) and the Construction Manager, but in the College's sole and absolute discretion, may agree to thereafter waive or reduce the further withholding of retainage in relation to amounts to thereafter be paid for Subcontractors and suppliers (on a Subcontractor by Subcontractor, and supplier by supplier basis). Even if the College so agrees, the College may nonetheless thereafter require that such retainage (as to any one or more Subcontractors or suppliers) again continue to be withheld. The Construction Manager shall submit the Construction Manager's application for payment monthly on the 25th of each month. The originals of such applications for payment shall be submitted to the Architect-Engineer (if applicable), and exact copies thereof shall simultaneously be delivered to the College. Payment of amounts certified by the Architect-Engineer (if applicable) and agreed to by the College shall be made to the Construction Manager within thirty (30) days after submission of a complete application for payment and all supporting documents and material. If the College does not agree with the amount requested (whether certified by the Architect-Engineer, or not), the Construction Manager shall modify the application to satisfy the College and resubmit the same, provided that the College will make payment of the undisputed amount.
 - ii. Final Payment - Final payment, constituting the unpaid balance of the Cost of the Project and the Construction Manager's Fee, shall be due and payable within thirty (30) days after the College has accepted occupancy of the Project, provided that the Project be then finally completed, that the Construction Manager has verified by his signature that he has completed all work required by the College, has delivered to the College all materials, items, equipment, documents, manuals and warranties required by the Contract Documents to be delivered by the Construction Manager to the College, and that this Agreement has been finally performed and upon receipt of a Construction Manager's Final Affidavit together with the final release of lien from all subcontractors and suppliers that have served a Notice to Owner as set forth in Section 713.06, Florida Statutes. However, if there should remain Work to be completed or which has been identified as not being in conformity with the Contract Documents, the Construction Manager and the Architect-Engineer (if applicable) shall create a list of those items prior to the issuance of final payment, and the College may retain a sum equal to 300% of the estimated cost of completing any Work and a proportionate amount of the Construction Manager's retainage, provided that said incomplete and/or nonconforming items are listed separately and the estimated cost of completing them are likewise listed separately. Thereafter, College shall pay to Construction Manager, monthly, the amount retained for each incomplete/nonconforming

item after each of said items is completed or corrected. If all such items are not completed or corrected within two (2) months of the date of Substantial Completion, the College may give notice to the Construction Manager that the College will complete or correct such items itself. If the cost to the College to complete or correct such items exceeds the balance withheld, the Construction Manager shall pay the College the difference within thirty (30) days of the Construction Manager's receipt of written notice demanding the same. If, after allowing the College a reasonable time to complete or correct such items or to accept the items less the reasonable cost to complete or correct them, the cost to the College to complete or correct such items is less than the balance remaining, the College shall thereafter pay such difference to the Construction Manager.

- iii. Payments to Subcontractors and Suppliers - In relation to all payments received by the Construction Manager from the College, the Construction Manager shall promptly, within fifteen (15) days after receipt of payment from the College, pay all the amounts due Subcontractors and suppliers and shall secure from all such subcontractors and suppliers, who have served a Notice to Owner, partial lien releases and claim waivers for all amounts then due. Copies of all of the partial lien releases and claim waivers shall be promptly provided to the College before or with the Construction Manager's next application for payment to the College. If at the time of final payment there should remain items to be completed, the Construction Manager and Architect-Engineer (if applicable) shall list those items required for completion and the Construction Manager shall require the retainage of a sum equal to 300% of the estimated cost of completing or correcting any unfinished or nonconforming items, provided that said unfinished or nonconforming items are listed separately and the estimated cost of completing or correcting any unfinished or nonconforming items is likewise listed separately. Thereafter, the Construction Manager shall pay to the Subcontractors monthly, the amount retained for each incomplete or nonconforming item after each of said items is completed or corrected. Before issuance of final payment without any retainage, the Subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, MEP as-built have been submitted and instruction for the College's operating and maintenance personnel is complete. Final payment may be made to certain select Subcontractors and suppliers whose Work is satisfactorily completed prior to the total completion of the Project, but only upon written approval of the College in the College's sole and absolute discretion.
- iv. Delayed Payments by College - The College shall have to right to withhold payment from the Construction Manager in such amounts as may be reasonably necessary to protect the College's rights, including, but not limited to, the right to liquidated damages for delay, the right to be indemnified against third party claims, as protection against the cost of correcting nonconforming Work, and otherwise pursuant to this Agreement.
- v. Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the Work but delivered and suitably stored at the site or another location subject to prior written approval and acceptance by the College on each occasion (and subject to such conditions as the College may, in the College's sole and absolute discretion, impose, including, but not limited to, insurance and storage at a bonded warehouse).
- vi. Withholding Payments to Subcontractors - The Construction Manager shall not withhold payments to Subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the College, adjusting pay requests and Project bookkeeping as required.

- C. ACCEPTANCE OF WORK. Neither the College's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.
- D. SUBSTANTIAL COMPLETION
- i. The Construction Manager shall notify the College when it considers Substantial Completion of the Work or a designated portion to have been achieved. The College shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by the College without excessive interference in completing any remaining unfinished Work. If the College determines that the Work or designated portion has not reached Substantial Completion, the College shall promptly compile a list of items to be completed or corrected so the College may occupy or use the Work or designated portion for its intended use. The Construction Manager shall promptly complete all items on the list.
 - ii. When Substantial Completion of the Work or a designated portion is achieved, the Construction Manager shall prepare a Certificate of Substantial Completion in a form acceptable to the College establishing the date of Substantial Completion and the respective responsibilities of the College and Construction Manager for interim items such as security, maintenance, utilities, insurance, and damage to the Work. In the absence of a clear delineation of responsibilities, the College shall assume all responsibilities for items such as security, maintenance, utilities, insurance, and damage to the Work. The Certificate of Substantial Completion shall also list any items to be completed or corrected, and establish the time for their completion or correction. The Certificate of Substantial Completion shall be submitted by the Construction Manager to the College for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.
 - iii. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.
- E. PARTIAL OCCUPANCY OR USE. The College may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work.
- F. FINAL COMPLETION AND FINAL PAYMENT
- i. Upon notification from the Construction Manager that the Work is complete and ready for final inspection and acceptance, the College shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.
 - ii. When Final Completion has been achieved, the Construction Manager shall prepare for the College's written acceptance a final application for payment stating that to the best of the Construction Manager's knowledge, and based on the College's inspections, the Work has reached Final Completion in accordance with the Contract Documents.
- G. CONSTRUCTION MANAGER ACCEPTANCE OF FINAL PAYMENT. Unless the Construction Manager provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of all claims.

19. **Project Time.** Time is of the essence in the performance of any work under this Agreement and Construction Manager shall diligently pursue the completion of the work and coordinate the work being done on the Project by its subcontractors and materialmen, as well as coordinating its work with all work of others at the project site, so that its work or the work of others shall not be delayed or impaired by any act or omission by Construction Manager. Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the work under the contract documents, and the coordination of College's suppliers and contractors.

Should Construction Manager be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Construction Manager, and not due to its fault or neglect, including, but not restricted to acts of God or of the public enemy, acts of government fires, floods, epidemics, quarantine regulation, strikes or lockouts, Construction Manager shall notify College in writing within forty-eight (48) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Construction Manager may have had to request a time extension.

No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatsoever, including those for which College may be responsible, in whole or in part shall relieve Construction Manager of his duty to perform or give rise to any right to damages or additional compensation from College. Construction Manager expressly acknowledges and agrees that it shall receive no damages for delay. Construction Manager's sole remedy, if any, against College will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage for Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.

20. **Completion.** When the entire work (or any portion thereof designated in writing by College) is ready for its intended use, Construction Manager shall notify College in writing that the entire work (or such designated portion) is substantially complete and request that owner issue a Certificate of Completion (substantial or final certificate of completion). Within a reasonable time thereafter, the Parties shall make an inspection of the work (or designated portion thereof) to determine the status of completion. If College considers the work (or designated portion) substantially complete, College shall prepare and deliver to Construction Manager a Certificate of Completion (substantial or final Certificate of Completion) which shall fix the date of Substantial Completion for the entire work (or designated portion thereof) and include a tentative punch list of items to be completed or corrected by Construction Manager before final payment. College shall have the right to exclude Construction Manager from the work and project site (or designated portion thereof) after the date of Substantial Completion, but College shall allow Construction Manager reasonable access to complete or correct items on the tentative punch list.

Upon receipt of written certification by Construction Manager that the work is completed in accordance with the contract documents and is ready for final inspection and acceptance, and upon receipt of final Application for Payment, College shall initiate the procedure for final payment as reflected in the College Operating Procedures. In addition to being required for final payment as reflected in the College Operating Procedure, payment shall not become due and payable until the Construction Manager submits: (a) all applicable lien releases and contract affidavits; (b) Consent of Surety (if applicable) to final payment, and ; (c) if required by College, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the contract documents, to the extent and in such form as may be designated by College.

21. **Liquidated Damages.** The commencement date shall be established in the 'Notice to Proceed' to be issued by the College. Construction Manager shall commence the work within five (5) calendar days from the commencement date. No work shall be performed at the project site prior to the commencement date. Any work performed by Construction Manager prior to the commencement date shall be at the sole risk of Construction Manager. The work shall be substantially completed within the time specified and agreed to by the Parties. The date of substantial completion of the work (or designated portions thereof) is the date certified by the College when construction is sufficiently complete, in accordance with the contract documents, so College can occupy or utilize the work (or designated portions thereof) for the use for which it is intended. The work shall reach final completion and be ready for final acceptance by College within the time specified by the Request for Quotation.

The Parties recognize that, since time is of the essence for any work under this agreement, College will suffer financial loss if the work is not substantially completed within the time specified in the Request for Quotation. Should Construction Manager fail to substantially complete the work within the specified time period, College shall be entitled to assess, as liquidated damages, but not as a penalty, the amount specified in the Request for Quotation for each calendar day thereafter until substantial completion is achieved which amount shall not be less than \$100.00 per day. The project shall be deemed to be substantially completed on the date the College issues a Certificate of Substantial Completion pursuant to the terms hereof. Construction Manager hereby expressly waives and relinquishes any right, which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the College's actual damages at the time of contracting, if Construction Manager fails to substantially complete the work in a timely manner.

22. **Contract Term.** This Agreement shall be for the period 4/1/2024 -3/31/2027 with an option to extend for three (3) one-year periods ending 3/31/2030.
23. **Pricing.** The College shall negotiate pricing with the Construction Manager on a project-by-project basis. In making determination regarding pricing, the College shall conduct an analysis of the cost of the professional services required in addition to considering the scope and complexity of the Project. Pursuant to Section 287.055(5)(a), Florida Statutes, for any lump-sum or cost-plus-a-fixed fee project over the threshold amount provided in Section 287.017, Florida Statutes for Category Four, the Construction Manager must execute a Truth-in-Negotiation certificate stating that the wage rates and other factual costs supporting the compensation are accurate, complete, and current at the time of contracting.
24. **Termination.** Should the Construction Manager be found by College to have failed to perform its services in a manner satisfactory to the College as per the specifications and requirements of this Agreement, the College may terminate this Agreement immediately for cause; further, the College may terminate this Agreement for convenience upon thirty (30) days written notice to the Construction Manager. The College shall be the sole judge of non-performance.

In the event of termination for cause, the Construction Manager shall be liable to the College for all damages suffered by the College and arising out of or related to Construction Manager's failure to perform.

In the event of termination for convenience, the Construction Manager will not have any claim against the College for lost profits or compensation for lost opportunities or otherwise. After a receipt of

such a Termination Notice and except as otherwise directed by the College, the Construction Manager shall:

- a) Stop orders/work on the date and to the extent specified
- b) Terminate and settle all orders and/or subcontracts relating to the performance of the terminated work
- c) Transfer all work in progress, completed work, and other materials related to the terminated work as directed by the College
- d) Continue and complete all parts of that work that have not been terminated
- e) In the event of termination for convenience, Construction Manager shall only be entitled to compensation for work actually completed and delivered through the date of termination together with a pro rata share of Construction Manager's overhead and profit for the completed work, which amounts shall constitute Construction Manager's exclusive remedy and the Construction Manager shall not be entitled to any further compensation or damages of any kind or nature

25. **Force Majeure.** In any event that the performance of any covenant(s) of this Contract shall be prevented by an act of God, physical disability, act or regulations of public authorities or labor union difficulties, strike, civil tumult, terrorism, war, epidemic, or any other reasons proven beyond their control, Construction Manager and College shall respectively be relieved of their obligations stated in this Agreement. With the exception, however, that any funds paid by or on behalf of College to Construction Manager in advance of the services shall be immediately repaid in full by Construction Manager to College.
26. **Independent Contractor.** College and Construction Manager acknowledge and agree that Construction Manager is and shall be an independent contractor; that neither Construction Manager nor any of its employees, representatives or agents is, or shall be deemed to be, an employee, partner or joint venture of College; and that neither Construction Manager nor any of its employees, representatives or agents shall be entitled to any employee benefits under any employee benefit plan, including medical, insurance and other similar plans, of College. Construction Manager further acknowledges that College will not withhold any amounts in respect to federal, state or local taxes from amounts payable by College to Construction Manager hereunder and it shall be the exclusive responsibility of Construction Manager to pay all amounts due in respect of applicable federal, state and local taxes on such amounts.
27. **Ownership of Work Product.** The College will be considered the owner of all work products produced under and resulting from this Agreement and RFQ.
28. **Insurance.** The Construction Manager shall maintain insurance as described and to the extent set forth in Section Two, Letter "Z" of RFQ #23-02. No part of the cost of such coverage shall be included in a GMP.
29. **Indemnification.** To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the College, Architect, Architect's consultants, and agents and employees of any of them from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Construction Manager, and persons employed or utilized by the Construction Manager in the performance of the Work, regardless of whether or not such, claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such

obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this section. The preceding provisions have been added specifically to memorialize the College and the Construction Manager's intent that the provisions of this section shall be fully enforceable in accordance with the provisions of Section 725.06, Florida Statutes, to the extent any portion hereof is not enforceable pursuant to this section, the Parties intend for this provision to remain enforceable to the extent it is consistent with Section 725.06.

In claims against any person or entity indemnified under this section by an employee of the Construction Manager, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Construction Manager under workers' compensation acts, disability benefit acts or other employee benefit acts.

30. **Dispute Resolution/Attorney Fees and Costs.** Prior to the filing of any litigation by the College or Construction Manager against the other (and, except as described below, as a precondition to any such filing), the College and Construction Manager shall engage in pre-suit mediation. Such mediation may be required by either party, at any time, and shall be conducted the same as if such mediation were ordered by a Florida Circuit Court (i.e. in accordance with, and subject to, all of the laws and rules applicable to court ordered mediation). Such mediation shall be conducted within a reasonable period of time after the same is requested in writing by either party. If the parties are unable to agree upon the selection of a mediator, either party may petition or request that the Circuit Court of the county where the project is located (or Mediation Coordinator for the county where the project is located) appoint a mediator. A mediator who is so appointed may only be challenged for cause, and not pre-emptorily. While the request for the conducting of such a mediation shall be a precondition to the filing of a civil action, in the event that either party is in jeopardy of losing its right to sue (i.e. the statute of limitations is about to expire), then a suit may be filed before mediation is conducted, provided that mediation is requested before, or simultaneously with, the filing of such suit, and is conducted before the named defendant in the suit is required to respond to the Complaint. If the scheduling of the mediation requires, the Plaintiff to that suit shall therefore grant the defendant an appropriate extension of time to respond to the Complaint so as to permit the mediation to be conducted before the defendant must so respond.

Subject to the preceding paragraph, in the event of any litigation between the College and Construction Manager arising out of or relating to this Agreement or any Project or Work performed pursuant hereto, the College and Construction Manager agree that the venue of any such litigation shall be, and shall only be, (i.e. exclusively) in a state court of competent jurisdiction in the county where the project is located.

It is further understood and agreed by and between the parties herein that this Agreement is subject to appropriation by the District Board of Trustees of South Florida State College.

31. **Notices.** All notices required to be given under this Agreement shall be deemed given when delivered by certified mail, return receipt, or on the next business day following delivery by facsimile transmission if a facsimile telephone number is shown below, to the designated representatives of the Parties. A Party may change its designated representative or address at any time by written notice in the same manner as for any other notice. The initial representatives of the Parties are as follows:

South Florida State College

Individual Name: _____

Org/Department: _____

Address: _____

Telephone Number: _____

Fax Number: _____

E-Mail Address: _____

_____(Construction Manager Name)

Individual Name: _____

Title: _____

Address: _____

Telephone Number: _____

Fax Number: _____

E-Mail Address: _____

32. **Public Record.** In the event Construction Manager acts on behalf of the College in the performance of any services to be provided under this agreement as provided under Section 119.011(2), Florida Statutes, then Construction Manager agrees to comply with Florida Public Record Law and specifically to comply with the requirements of Section 119.0701(2), Florida Statutes.

- a) Vendor, while acting on behalf of the College, shall keep and maintain public records required by the College to perform the service
- b) Upon request from the College's custodian of public records, vendor shall provide the College with a copy of the requested records or allow the access to public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in under Chapter 119, Florida Statutes or as otherwise provided by law
- c) In the event of a public records request pertaining to records in vendor's possession or control:
 - i. The vendor shall promptly provide the College copies of all records created or maintained in the course of performance under this contract or all such records to be inspected and copied within a reasonable amount of time
 - ii. If the vendor fails to supply such records or make the records available within a reasonable amount of time than the College may apply to a state court of competent jurisdiction for an order compelling the production of such records. In the event the College seeks mandatory injunctive relief, vendor waives the requirement that the College must first prove: (a) its lack of an adequate remedy at law (b) the irreparable harm absent entry of the injunction, or (c) that injunctive relief will serve the public interest
- d) Upon the completion of the contract, the vendor shall:
 - i. Transfer, at no cost, to the College all public records in possession of the vendor and shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements; or,
 - ii. Keep and maintain public records required by the College to perform the service and shall meet all applicable requirements for retaining public records

- e) All records stored electronically must be provided to the College, upon request from the College's custodian of public records, in a format that is compatible with the information technology systems of the College
 - f) Vendor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed for the duration of the contract term and following completion of the contract if the vendor does not transfer the records to the College
 - g) **IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDORS'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO ANY RESULTING CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (863)453-6661, publicrecords@southflorida.edu, SOUTH FLORIDA STATE COLLEGE, 600 West College Drive, Avon Park, FL 33825**
33. **Legal Authority.** Construction Manager warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, execute this Agreement and bind itself to its terms.
34. **Non-Assignment.** Construction Manager shall not assign or subcontract any of its obligations under this Agreement without the express advance written consent of College. Any unauthorized assignment shall be void. In the event of any attempted assignment in violation of the foregoing College shall have the right, but not the obligation to terminate this Agreement, without waiver of any other right or remedy, upon notice of Construction Manager's assignment in violation of this section.
35. **Binding Effect.** This Agreement is binding upon the heirs, personal representatives, successors, and permitted assigns of both Parties.
36. **Amendment.** No amendment to this Agreement shall be valid unless it is made in a writing signed by the authorized representatives of the Parties.
37. **Waiver.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the same or other provision hereof.
38. **No Discrimination.** Construction Manager shall not discriminate against any employee, applicant for employment, independent contractor, or any other person based on race, sex, gender identity, age, color, religion, national origin, ethnicity, disability, pregnancy, sexual orientation, marital status, genetic information or veteran status. South Florida State College is committed to providing an educational and working environment free from discrimination and harassment. All programs, activities, employment and facilities of college are available to all on a non-discriminatory basis, without regard to race, sex, gender identity, age, color, religion, national origin, ethnicity, disability, pregnancy, sexual orientation, marital status, genetic information or veteran status. The College is an equal access/equal opportunity institution. Questions pertaining to educational equity, equal access or equal opportunity should be addressed to the College's Title IX Coordinator: Christianna Bobo; Bldg. B, Room 167; 600 West College Drive, Avon Park, FL 33825; (863) 784-7039; Christianna.Bobo@southflorida.edu. or US Department of Education, Office of Civil Rights, Atlanta Office: 61 Forsyth St. SW Suite 19T70, Atlanta, GA 30303-8927.

- 39. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, or by an administrative hearing officer in accordance with Chapter 120, Florida Statutes, such holding shall not invalidate or render unenforceable any other provision hereof.
- 40. **Governing Law, Jurisdiction and Venue.** This Agreement shall be interpreted and enforced under the laws of the State of Florida. Any action arising under this Agreement shall be filed and tried exclusively in the courts of Highlands County, Florida.
- 41. **Laws, Ordinances, Rules, Regulations, Permits, and Licenses.** The Construction Manager shall observe and obey all the laws, ordinances, rules, regulations, and policies of the College and the federal and state governments which may be applicable to the Construction Manager’s operation at the College, and shall, at the sole cost of the Construction Manager, obtain and maintain all permits and licenses necessary to comply with such requirements and standards.
- 42. **Entire Agreement.** This Agreement, including the recitals set forth above, constitutes the entire agreement between the Parties, and supersedes any previous contracts, understanding, or agreements of the Parties, whether verbal or written, concerning the subject matter of this Agreement, except as set forth herein.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed.

THE DISTRICT BOARD OF TRUSTEES OF
SOUTH FLORIDA STATE COLLEGE, FLORIDA

Name: _____
Signature: _____
Title: _____
Date: _____

(Construction Manager Legal Name)
Name: _____
Signature: _____
Title: _____
Date: _____

EXHIBIT ONE
ITEMS TO BE SUBMITTED WITH GENERAL CONTRACTOR'S
REQUEST FOR FINAL PAYMENT

- _____ 1. Pay Request (4 copies with original signatures and original seals, noted as Final)
- _____ 2. Final Schedule of Contract Values
- _____ 3. Consent of Surety to make Final Payment (Signed and Sealed)
- _____ 4. Power of Attorney from Surety for Release of Final Payment (Signed and Sealed and dated same as Consent of Surety)
- _____ 5. Certificate of Contract Completion
 - a. Page One completed by the General Contractor (original plus three copies)
 - b. Page Two completed by Architect-Engineer (original plus three copies)
- _____ 6. Satisfactory Conclusion or Release of Lien from all subcontractors or laborers who have filed Notices to Owner, Intent to Liens or have indicated non-payment from the General Contractor
- _____ 7. Contractor's Warranty for one year from the date of Substantial Completion.
- _____ 8. Copy of the approval by the Architect-Engineer and the transmittal to the using agency of manuals, shop drawings, as-built (CAD and PDF) brochures, warranties, and List of Subcontractors, with telephone numbers and addresses
- _____ 9. Verification that Using Agency personnel have been trained in the operation of their new equipment (per system: HVAC, controls, fire alarm, etc.), attendance lists and preferred
- _____ 10. Fully executed Roof Warranty (if applicable) in the name of the Using Agency
- _____ 11. Other special warranties as required by specifications of Asbestos Containing Materials
- _____ 12. Contractor 's Certificate of Asbestos Use
- _____ 13. Copy of Certificate of Occupancy

NOTE: The Project Director shall verify the math of all Pay Requests prior to signing Final Pay Request to assure correct payment.

Project Number: _____

Project Name and Location: _____

Project Director Signature: _____

**EXHIBIT TWO
FEMA**

The following FEMA terms and conditions are applicable in the event any work performed by the Construction Manager (Contractor) is related to FEMA reimbursable construction work and are made a part of this Continuing Services Agreement for CM At-Risk Services:

Remedies for Breach of Contract

1. All work to be performed under this Agreement shall be timely commenced. A breach of this Agreement by Contractor would cause substantial delay in the completion of the required services affecting the safety and welfare of the public.
2. In the event of Contractor's breach of its performance obligations, South Florida State College shall have all rights and remedies against Contractor as provided by law.

Termination for Cause or Convenience

Should the Contractor be found by College to have failed to perform its services in a manner satisfactory to the College as per the specifications and requirements of this Agreement, the College may terminate this Agreement immediately for cause; further, the College may terminate this Agreement for convenience upon thirty (30) days written notice to the Contractor. The College shall be the sole judge of non-performance.

In the event of termination for cause, the Contractor shall be liable to the College for all damages suffered by the College and arising out of or related to Contractor's failure to perform.

In the event of termination for convenience, the Contractors will not have any claim against the College for lost profits or compensation for lost opportunities or otherwise. After a receipt of such a Termination Notice and except as otherwise directed by the College, the Contractor shall:

- a) Stop orders/work on the date and to the extent specified;
- b) Terminate and settle all orders and/or subcontracts relating to the performance of the terminated work;
- c) Transfer all work in progress, completed work, and other materials related to the terminated work as directed by the College;
- d) Continue and complete all parts of that work that have not been terminated;
- e) In the event of termination for convenience, Construction Manager shall only be entitled to compensation for work actually completed and delivered through the date of termination together with a pro rata share of Construction Manager's overhead and profit for the completed work, which amounts shall constitute Construction Manager's exclusive remedy and the Construction Manager shall not be entitled to any further compensation or damages of any kind or nature.

Equal Employment Opportunity Clause

During the performance of this Agreement, Contractor shall comply with the Equal Employment Opportunity Clause (41 CFR 60- 1.4(b)):

1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated

during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

2. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

3. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

4. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

5. Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor for purpose of investigation to ascertain compliance with such rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules regulations, and orders.

8. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

9. Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of subparagraphs 1 through 8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or contractor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or contractor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Davis-Bacon Act

1. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
2. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
3. Additionally, contractors are required to pay wages not less than once a week.

Compliance with the Copeland “Anti-Kickback” Act

1. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

2. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

Contract Work Hours and Safety Standards Act

Contracts in excess of \$100,000 that involve the employment of mechanics or laborers shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor and its subcontractors shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation: liability for unpaid wages: liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. The Government shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. The contractor and subcontractor shall insert in any subcontract the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If applicable to the work and services performed by Contractor under the parties' AGREEMENT and if the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the GOVERNMENT wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the GOVERNMENT must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the District Board of Trustees, South Florida State College and understands and Page 16 of 25 www.fema.gov/procurement-disaster-assistance-team To Table of Contents U. S. Department of Homeland Security Headquarters 500 C St SW Washington, D.C. 20042 agrees that the District Board of Trustees, South Florida State College will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the District Board of Trustees, South Florida State College and understands and agrees that the District Board of Trustees, South Florida State College will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Energy Efficiency and Conservation

If applicable to the work and services performed by Contractor under the parties' AGREEMENT, Contractor shall comply with the mandatory standards and policies of the state regulation promulgated in accordance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

Debarment and Suspension

1. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the contractor, its principals

(defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by GOVERNMENT. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to GOVERNMENT, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C AGREEMENT is valid and throughout the period of performance. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-lobbying Amendment

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certifications to the awarding agency.

Byrd Anti-lobbying Amendment

For Contracts of \$100,000 or more:

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Page 20 of 25 www.fema.gov/procurement-disaster-assistance-team To Table of Contents U. S. Department of Homeland Security Headquarters 500 C St SW Washington, D.C. 20042

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

Procurement of Recovered Materials

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired--

- a. Competitively within a timeframe providing for compliance with the contract performance schedule;
- b. Meeting contract performance requirements; or
- c. At a reasonable price.

2. Information about this requirement, along with the list of EPA-designed items, is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>.

3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Small and Minority Business, Women's Business Enterprises and Labor Surplus Area Firms

Should the Contractor subcontract any of the work under this Agreement, Contractor shall take the following affirmative steps: place qualified small and minority businesses and women's business enterprises on solicitation lists; assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Access to Records

1. Contractor agrees to provide the State of Florida, District Board of Trustees, South Florida State College, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

2. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. Contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract

4. In compliance with the Disaster Recovery Act of 2018, FSW and the Contractor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Changes in the Project

College shall have the right at any time during the progress of the work to change the work. Promptly after being notified of a change, Contractor shall submit an itemized estimate of any cost or time increase or savings it foresees as a result of the change. Except in an emergency endangering life or property, or as expressly set forth herein, no addition or changes to the work

shall be made except upon written order of College, and College shall not be liable to the Construction Manager for any increased compensation without such written order. No officer, employee or agent of the College is authorized to direct any extra or changed work orally. A Construction Change Directive and/or a Change Order shall be issued and executed promptly after an agreement is reached between Contractor and College concerning the requested changes. Contractor shall promptly perform changes authorized by duly executed Change Order(s).

The contract amount and contract time shall be adjusted in the Change Order in the manner as the Parties shall mutually agree.

Seals, Logos, and Flags

Contractor shall not use the U.S. Department of Homeland Security's seal(s), logos, crests, or reproductions of flags or likenesses of the U.S. Department of Homeland Security's agency officials without specific FEMA preapproval.

Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance may be used to fund the Agreement. Contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives

No Obligation by the Federal Government

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to GOVERNMENT, Contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts

Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

Time and Materials

Any time and materials contract must include a ceiling price that the Contractor exceeds at its own risk. The Contractor also agrees for Contractor to assert a high degree of oversight in order to obtain reasonable assurance that the Contractor is using efficient methods and effective cost controls, and Contractor agrees to fully cooperate with such oversight measures. 2 CFR § 200.318(j)(1).

No Involvement in Development of bid or proposal Specifications

Contractor acknowledges that Contractor was not involved with developing or drafting the specifications, requirements, statement of work, invitation for bids or request for proposals for this procurement solicitation. 2 CFR § 200.319(a).

Cost Plus a Percentage of Cost Contracts Prohibited

"Cost plus a percentage of cost" or "percentage of construction cost" forms of contract are prohibited under the Federal procurement standards and are ineligible for FEMA reimbursement. 2 CFR § 200.323(d).

Bonding Requirements

In accordance with 2 CFR § 200.325, for construction or facility improvement contracts or subcontracts exceeding the federal Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of District Board

of Trustees, South Florida State College provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
3. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Minority and Women’s Business Enterprise. Historically under-utilized Business and Small Business Enterprise Participation

Contractor is required to make some basic commitments to ensure the overall success of this program. Contractor commits to the following: MWBE/HUB/SBE Participation – It is District Board of Trustees, South Florida State College’s goal to have MWBE/HUB/SBE participation in providing services under contracts. If Contractor intends to employ sub- contractors in providing services/products related to this solicitation, Contractor must make and demonstrate a good faith effort to include MWBE/HUB/SBE participation under a contract.

Contractor’s good faith effort must include, but is not limited to, the following affirmative steps (ref. 2 CFR 200.321): 1. Placing qualified small and minority businesses and women’s business enterprises on solicitation list; 2. Assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources; 3. Dividing total requirements, when economically feasible, into smaller task or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises; 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; 5. Using the services and assistance as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.