CONSTRUCTION MANAGER AT RISK CONTRACT NO. 2023-17.003
PRECONSTRUCTION SERVICES CONTRACT, PHASE I

This Contract No. 2023-17.003 ("Contract") is entered into by and between the City of North Port, Florida, a municipal corporation of the State of Florida ("City") and AJAX BUILDING COMPANY, LLC, a Florida limited liability company, registered to do business in the State of Florida, whose principal place of business is 1080 Commerce Boulevard, Midway, FL 32343 ("CMAR").

WITNESSETH

WHEREAS, the City intends to undertake a project that requires construction manager at risk services; and

WHEREAS, the City issued a request for proposal for construction manager at risk services via RFP No. 2023-17 ("RFP"); and

WHEREAS, the City evaluated and ranked the proposals received in accordance with applicable federal, state, and local laws, regulations, and policies, and found the CMAR qualified to perform the necessary services; and

WHEREAS, the City may divide the CMAR services into two phases: (1) CMAR for preconstruction services, and (2) CMAR for construction services as provided in this Contract; and

WHEREAS, the preconstruction services generally include design support, coordination, project scheduling, design and equipment evaluation and recommendations, project scheduling and costs, and the guaranteed maximum price process; and

WHEREAS, the construction services generally include managing, subcontracting, and completing the construction within a certain time and at a certain cost; and

WHEREAS, the CMAR has reviewed the services to be provided under this Contract and is qualified, willing, and able to provide and perform all such services in accordance with the terms of this Contract; and

WHEREAS, this Contract authorizes the preconstruction phase; and

WHEREAS, subsequent phases, if authorized, must encompass all services contemplated by the RFP, and must be authorized solely by written amendment to this Contract.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the sufficiency and receipt of which are acknowledged, the parties agree as follows:

I. DEFINITIONS

The following terms have the ascribed meanings, as used in this Contract and the RFP.

A. Administrative Agent. The City staff representative for this Contract.

B. Allowance. A particular line item or unit cost budget for items not finalized at the time of the City's acceptance of the Guaranteed Maximum Price.

C. City Contingency. A specific amount of money that the City designates for a construction project and sets aside in case any unforeseen or extra costs arise during the construction process.

D. Change Order/Amendment. A written modification to this Contract approved and signed by the parties.

E. Construction Documents. Final working drawings and specifications required for a project.

F. Contract Documents. The RFP and all exhibits, attachments, schedules, addenda, instructions, forms, technical specifications, Work Assignment, Construction Documents, general provisions, special provisions, CMAR response, other documents attached to the request for proposal and this Contract (collectively, the "RFP").

G. Design Consultant. The design professional services contractor selected by the City for each project Work Assignment who is responsible for the design services as described in this Contract and the separate professional services contract.

H. Effective Date. The date the last of the parties approves or executes this Contract.

I. Field Change. A minor modification to this Contract, not involving an increase to the GMP.

J. Final Completion. The point when the CMAR has completed all Work related to a project and the City has accepted the Work.

K. Guaranteed Maximum Price ("GMP"). The sum of the CMAR's cost of Work and the CMAR's fees for the performance and completion of all services for the construction phase of a project, if any, including but not limited to the completion of the Work in accordance with the Construction Documents.

L. Preconstruction Phase Fee. The sum to be paid for providing all preconstruction services, as set forth in this Contract and as contemplated in the RFP.

M. Project. Each Work Assignment will define its specific scope of services and include a project title.

N. Project Schedule. The project timeline that the CMAR prepared as approved by the Administrative Agent, as amended, for accomplishing a project, including the Preconstruction Schedule and subsequent schedules for any amendment.

O. Project Team. The Administrative Agent, the Design Consultant as specified in the Work Assignment, and the CMAR.

P. Schedule of Values. A list of every work item on a project, along with each item's value or cost. This comprehensive work list represents the entire construction project and the entire contract price.

Q. Substantial Completion. The point when a project or designated portion thereof is sufficiently complete in accordance with the Construction Documents to enable the City to fully occupy and utilize

each project for its intended use and all certificates of occupancy or permit close outs have been issued.

R. Trade Contractor. All construction-related contractors having a direct contract with the CMAR for the performance of work.

S. Work. All authorized and approved work; materials; supplies; tools; fixtures; labor; services; equipment; construction management services, contract administration services relating to the design and any CMAR recommendations; project development; preconstruction and construction services for a project to be performed and provided by the CMAR (and its agents, employees, Trade Contractors, and subcontractors) pursuant to the RFP, this Contract, as amended, and the Construction Documents.

T. Work Assignment. For each amendment to this Contract for the GMP, including the Work Assignment, the specific scope of services, Project Schedule and other documents attached to the Work Assignment for this Contract, as amended.

II. CONSTRUCTION MANAGER AT RISK SERVICES

A. The CMAR agrees to diligently perform the required services as described in the Scope of Services attached as Exhibit A ("Scope of Services").

B. Unless otherwise advised in writing, the CMAR must deliver to the City within 10 days after receipt of the Notice to Proceed a detailed Preconstruction Schedule with specific calendar dates in conformity with the Preconstruction Schedule. This Preconstruction Schedule must also include the specific calendar dates for the delivery or completion of all documents, reports, and other data required.

C. This Contract begins on the Effective Date and terminates upon the completion of the Scope of Services as scheduled in the Preconstruction Schedule attached as Exhibit B ("Preconstruction Schedule"), or as otherwise provided in this Contract. This Contract may be amended by mutual written agreement of the parties.

D. This Contract may be extended due to unforeseen circumstances or unknown site conditions that alter the scope of services only as agreed to in writing by both parties and incorporated into this Contract as a Field Change or Change Order/Amendment.

III. COMPENSATION

A. The City will pay the CMAR for: (1) The preconstruction services rendered hereunder and completed in accordance with the terms and conditions of this Contract and (2) The Work Assignment, as the total contract amount for performing the tasks for each specific Scope of Services in a Work Assignment that must be based on the Fee Schedule attached as Exhibit C ("Fee Schedule"). The Work Assignment as detailed in the form attached as Exhibit D ("Work Assignment") will be subsequently incorporated in this Contract by the Administrative Agent for each project. The total contract amount includes all costs necessary to provide all services outlined in this Contract and each Work Assignment.

B. The CMAR represents and warrants that wage rates and other factual unit costs supporting the compensation relative to this Contract are accurate, complete, and current as of the Effective Date. The amounts set forth in this Contract will be adjusted to exclude any significant sums by which the City determines the amount of any task was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.

C. If the Administrative Agent requires the CMAR to perform additional services related to this Contract, then the CMAR is entitled to additional compensation based on the Fee Schedule, as amended, to the extent necessary to accommodate the additional work. Any additional compensation requires a contract amendment, and the City must not pay any additional compensation before the Contract is amended. If additional services are required because of the CMAR's error, omission, or negligence, the CMAR is not entitled to additional compensation for those additional services.

IV. METHOD OF PAYMENT

A. The CMAR must submit a monthly application for payment to the City for all Work completed during the corresponding month. For Work that was partially completed, progress payments must be invoiced in proportion to the percentage of Work completed on those specific service activities as approved in writing by the Administrative Agent. The CMAR must use a form mutually agreed upon by the CMAR and the Administrative Agent for all payment requests, along with an updated work schedule reflecting the progress of all Work Assignments.

B. Payment requests must be accompanied by either written approval and direction of the surety, or receipt of updated affidavits of payment by subcontractors and/or suppliers, in accordance with Florida Statutes Section 255.05(11). The CMAR's payment request must include any changes approved in previous payment requests.

C. Upon receiving the CMAR's invoice, the Administrative Agent will review the invoice to certify that the services have been rendered in conformity with this Contract. The Administrative Agent and the City's Finance Department must process and issue the CMAR's payment in accordance with the Local Government Prompt Payment Act, Florida Statutes Section 218.70, *et seq.*

D. Retainage during the construction phase must comply with the minimum requirements of Florida Statutes.

E. The CMAR's submittal for final payment must include the CMAR's and its contractor's Release of Lien documentation and payment of all subcontractors, materialmen, and suppliers on forms approved by the City. The City's or its authorized agent's approval is required before making final payment for any work, materials, or services furnished under this Contract.

V. LIABILITY

A. The City will not provide any services to the CMAR in connection with any claim brought on behalf of or against the CMAR.

B. If the CMAR is comprised of more than one legal entity, each entity is jointly and severally liable hereunder.

VI. CMAR REPRESENTATIONS, WARRANTIES, AND RESPONSIBILITIES

A. The CMAR accepts the relationship of trust and confidence established between the parties in this Contract and covenants that the CMAR is acting in a fiduciary capacity to protect the City's interests. The CMAR covenants to furnish its best skill and judgement and to cooperate with the City and the Design Consultant for the duration of each project in accordance with this Contract in an expedient and efficient manner.

B. The CMAR is responsible for the professional quality, technical accuracy, thoroughness, and the coordination of all determinations, reports, other documents, and data used or produced by or at the behest of the CMAR under this Contract. The CMAR must, without additional compensation, correct or revise all errors, omissions, or deficiencies in its reports and other documents and data.

C. The CMAR warrants that it has not employed or retained any company or person to solicit or secure this Contract and that it has not paid or agreed to pay any person, independent contractor, company, corporation, individual, or firm any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Contract.

D. The CMAR covenants and agrees that the CMAR, its employees, and its contractors are bound by the *Code of Ethics for Public Officers and Employees* in Florida Statutes Chapter 112, Part III. The CMAR agrees to incorporate the provisions of this subsection in any subcontract into which it might enter in furtherance of the Work performed pursuant to this Contract.

E. The City reserves the right to suspend, debar, or terminate the CMAR as otherwise provided in this Contract.

F. The CMAR must comply with all federal, state, and local laws, regulations, and policies applicable to the Work or payment for the Work performed in furtherance of this Contract.

G. The CMAR must maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Contract. The CMAR must make these documents available to the City within ten (10) calendar days after written request for inspection, auditing, and copying during normal business hours. The CMAR must retain these records for a minimum of ten (10) City fiscal years (from October 1 to September 30) after Final Completion of each project.

H. The CMAR must notify the Administrative Agent at least three (3) days in advance of any meeting between the CMAR and any City Commissioner, regulatory agency, or private citizen related to this Contract.

I. When all Work contemplated by this Contract has been completed and has been inspected and approved by the City or its authorized agent, the CMAR must furnish the City with the CMAR's and its contractor's Affidavit of Payment in a form acceptable to the City. Signed Affidavits of Payment are required from all subcontractors hired by the CMAR, unless payment is approved by the surety in accordance with Florida Statutes Section 255.05(11). The affidavits must state whether the subcontractor(s) have been paid in full or whether there are payments remaining. A list of all subcontractors must be furnished to the City prior to any payments against the Contract.

J. All contracts between the CMAR and any subcontractor that the CMAR hires must conform to the provisions of this Contract and the Contract Documents. The CMAR must incorporate the requirements of this Contract in the subcontracts. The CMAR must furnish the City with a list of all subcontractors and suppliers prior to any payments against the Contract. All subcontractors are subject to the City's approval. Any change in subcontractors or suppliers must include the written consent and approval of the City.

K. The CMAR must pay all taxes required by law in connection with the activities done in furtherance of this Contract including sales, use, and similar taxes, and unless otherwise mutually agreed to in writing, must secure all licenses and permits necessary for proper completion of the Work, and pay any related fees.

L. Violation of any local, state, or federal law in the performance of this Contract constitutes a breach of this Contract. The CMAR must comply with all laws, ordinances, rules, regulations, and orders of all public authorities relating to the performance of the Work required. If any of the Contract documents are at variance with any law or regulation, the CMAR must notify the City without delay upon discovery.

M. During the term of this Contract, the CMAR must be registered with and use the Department of Homeland Security E-Verify System as required by Florida Statutes Section 448.095, Employment Eligibility, including but not limited to verifying the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The CMAR must maintain a copy of the affidavit for the duration of the Contract. The CMAR must require all subcontractors to comply with Florida Statutes Section 448.095 for registration, to use of the E-Verify system operated by the United States Department of Homeland Security, and to provide the required affidavit.

N. The CMAR must comply with all other requirements, as amended from time to time, relating to the Federal Emergency Management Agency and any other grant or funding agency.

VII. DESIGN REVIEW SERVICES

A. The CMAR must complete each project in accordance with the established Preconstruction Schedule and must make recommendations to the Administrative Agent and the Design Consultant regarding the drawings and specifications to facilitate the construction of the Work. If the Administrative Agent agrees with the recommendations, then the CMAR must work with the Design Consultant to change the plans and specification and to obtain the Administrative Agent's approval in writing.

B. The CMAR must be thoroughly familiar with each project. Where appropriate and as requested, the CMAR must make written recommendations with respect to each project, foundations, selection of systems and materials and cost reducing alternatives, and must assist the Design Consultant and the Administrative Agent in evaluating alternatives and their long-term cost effects.

C. The CMAR must call to the attention of the Administrative Agent and Design Consultant any known or perceived defects or omissions in the design, drawings, and specifications or other documents as

the CMAR has reasonable belief to exist, as soon as practicable. The CMAR must report without delay all identified design errors or omissions; but the parties recognize that the CMAR's review is made in the CMAR's capacity as a contractor and not as a licensed design professional. The recommendations and advice of the CMAR concerning design alternatives are subject to the City's review and written approval.

D. The CMAR must review the Construction Documents and make recommendations in writing to the Administrative Agent with respect to dividing the Work in a manner that allows the CMAR to take bids and award separate construction Trade Contracts. The divisions must be acceptable to the Administrative Agent, taking into consideration factors including but not limited to, natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations, availability of qualified and minority contractor participation, and other factors pertinent to saving time and cost.

E. The CMAR must assess conditions in the construction market to identify factors that will or may affect costs and time for completing each project. The CMAR must conduct reviews as may be reasonably necessary to: (1) determine and report on availability of labor, material, equipment, potential bidders and possible impact of any shortages or surpluses of labor or material; and (2) in light of such determination, make recommendations with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction and other matters that will promote cost savings and completion within the Project Schedule.

VIII. BASIS OF GUARANTEED MAXIMUM PRICE

A. The CMAR must submit to the City a proposed GMP as described in the Scope of Services and consistent with the Work Assignment. The CMAR must submit the proposed GMP in accordance with the Preconstruction Schedule.

B. The CMAR acknowledges and agrees that the GMP proposal must include:

(1) The Scope of Services under the RFP, Work Assignment, this Contract, the Construction Documents, and any other material documents that were used in preparation of the GMP. Notwithstanding the foregoing, if the Construction Documents fail to depict an item that is essential for operations, the CMAR must provide and install the item as part of the GMP. If the Construction Documents contain inconsistencies, discrepancies, or omissions of which the CMAR has knowledge, or that are reasonably inferable from the Construction Documents, the CMAR will not be entitled to a Project Schedule extension or a GMP adjustment for the items and the CMAR must correct, and complete the items;

(2) A list of all allowances and the statement of their basis;

(3) A list of all material clarifications and assumptions made in preparing the GMP as necessary to supplement the information contained in the drawings and specifications. The list must not include restatements of any existing provisions of this Contract;

(4) A statement of the estimated costs (organized by trade categories), allowances, contingency, and other items, including a list of all fees or other costs that comprise the GMP;

(5) The date of Substantial Completion upon which the proposed GMP is based; and

(6) A schedule of issuance dates for the Construction Documents upon which the proposed GMP is based.

C. The CMAR acknowledges that the GMP includes an amount designated as the City Contingency. The CMAR is only eligible to receive the City Contingency if the City approves a Change Order/Amendment to this Contract or as otherwise provided in this Contract. Any Change Order/Amendment must specify the portion of the City Contingency being made available and the purpose.

D. The GMP must be inclusive of the arrangement and supply of all job-site facilities, including workstations equipped with telephones, desks, and computers or other electronic equipment that are reasonably necessary for the Project Team to perform the management, inspection, and supervision of the project's construction.

E. The CMAR acknowledges that the Design Consultant may modify the Construction Documents from time to time, and if the City presents the CMAR with modified Construction Documents, the CMAR must complete each project as modified.

F. The GMP proposal is subject to the City's acceptance, at the City's sole discretion. If the City wishes to accept the GMP proposal, the City must prepare a contract amendment, incorporating the GMP along with any other provisions the City deems necessary for the performance of the construction phase of each project. In the event the City does not accept the GMP proposal, the Administrative Agent will inform the CMAR in writing; this notice constitutes an immediate termination of this Contract or the Work Assignment, or both, and neither party will have any obligation to the other regarding the Construction Phase of each project.

IX. OWNERSHIP AND USE OF WORK PRODUCT

A. It is understood and agreed that the CMAR must deliver to the City the CMAR's work product, including reports and other documents and data developed in connection with its services; this work product will become the City's property upon receipt. The CMAR hereby assigns all its copyright and other proprietary interests in the work product to the City.

B. The CMAR may not use any of the work product on any non-City project unless the Administrative Agent agrees in writing. The City's reuse of the work product on other projects will be at the City's risk.

C. The City records all land related changes and/or activities in its corporate based Geographic Information System (GIS). The CMAR must provide the City at no additional cost all GIS or Computer Aided Drafting (CAD) formatted data created or modified in support of each project, as a project deliverable for inclusion into the City's GIS. GIS data files submitted in support of a project must adhere to City GIS standards, and CAD drawings submitted must adhere to City CAD standards as provided in writing by the Administrative Agent.

D. Computer systems and databases used for providing the documents necessary to this Contract must be compatible with existing City systems. The Administrative Agent will advise the CMAR of the systems and databases in writing or in the Notice to Proceed, and upon any changes thereafter.

X. CMAR PERFORMANCE

A. The performance and completion of the required services is vitally important to the City's interests. The CMAR must assign project manager and other personnel necessary to assure faithful prosecution and timely delivery of services for this Contract. The CMAR's key personnel assigned to perform the services of each Work Assignment must include the same pool of personnel as identified in the RFP response. The CMAR must ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform assigned tasks. Any change or substitution to the CMAR's key personnel must receive the Administrative Agent's written approval before becoming effective.

B. The CMAR's services must commence upon the CMAR's receipt of the Administrative Agent's written Notice to Proceed. The time limits in Preconstruction Schedule begin on the CMAR's date of receipt of the Notice to Proceed but are subject to adjustment depending upon the design schedule in the Design Consultant's Contract.

C. Time is of the essence in the performance of this Contract. The CMAR agrees that all work performed in furtherance of this Contract must be completed within the time limits in the Project Schedule, subject only to delays caused by force majeure or other reasons authorized in this Contract.

D. The CMAR agrees to provide the Administrative Agent monthly written progress reports concerning each project's status. Written progress reports must accompany each monthly invoice. The Administrative Agent may determine the format for this progress report. Upon the City's request, the CMAR must advise the City in writing regarding the status of the CMAR's Work.

E. In the event unreasonable delays occur on the part of the City or regulatory agencies as to the approval of any plans, permits, reports, or other documents submitted by the CMAR and that delay the Project Schedule completion date, the Administrative Agent will not unreasonably withhold the granting of an extension of the Project Schedule time limitation equal to the delay.

F. In the event the Preconstruction Schedule completion date is delayed beyond the date stated in the Preconstruction Schedule, the CMAR must continue its efforts in full force and effect until the earlier of (1) written direction by the Administrative Agent; or (2) 12 additional months have elapsed after the Preconstruction Schedule completion date.

G. If the City delays or suspends a project for a period exceeding six months, the City and the CMAR may negotiate a contract amendment for the fair and equitable compensation for the CMAR's continued services related to the delayed or suspended project.

XI. CITY OBLIGATIONS

A. The Administrative Agent is designated to serve as the City's project coordinator and to do all things necessary to properly administer the terms and conditions of this Contract for the City. The responsibilities of the Administrative Agent include but are not limited:

(1) Examining all reports, sketches, drawings, estimates, proposals, and other documents the CMAR presents, and render any required written decisions within a reasonable time;

(2) Transmitting instructions; receiving information; and interpreting and defining City policies and decisions with respect to design, materials, and other matters pertinent to the Work;

(3) Reviewing for approval or rejection all the CMAR's documents and payment requests; and

(4) Determining when and if it may be in the City's best interests to shift funding among tasks identified in the Scope of Services, providing that the not-to-exceed amount of this Contract is not exceeded. Any determination must be memorialized in a Field Change.

B. Upon request, the City will furnish the CMAR with all data, plans, studies, and other information in the City's possession that may be useful in connection with the Work, all of which remain the City's property and must be returned to the Administrative Agent upon completion of the CMAR's services.

C. The Administrative Agent will conduct periodic reviews of the CMAR's work. The Administrative Agent is responsible for the availability of other City personnel where required and necessary to the CMAR's completion of each project. The City, in its sole discretion, will determine the availability and necessity of City personnel to assist the CMAR.

XII. TERMINATION

A. City's Termination With or Without Cause. The City Manager or designee may terminate any Work and this Contract, or both, with or without cause, in whole or in part, whenever the City Manager or designee determines that termination is in the City's best interest.

(1) The City may effectuate termination by delivering to the CMAR a written notice of termination at least thirty (30) calendar days before the date of termination, specifying the extent to which performance of the Work is terminated and the date upon which the termination becomes effective.

(2) Except as otherwise directed in the notice, the CMAR must: (i) cease all work on the date of receipt of the notice of termination or other date specified in the notice; (ii) place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of the portion of the Work not terminated; (iii) terminate all vendors and subcontracts; and (iv) settle all outstanding liabilities and claims.

(3) The CMAR must deliver to the City all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by the CMAR in connection with its services.

(4) The City will pay the CMAR for the portion of the terminated Work completed prior to delivery of the notice of termination. The City has no obligation under any circumstance to make any payment to the CMAR for terminated Work that has not been performed or that is performed after delivery of the notice of termination.

B. Non-Appropriation. The parties acknowledge and agree that the City's financial obligations in this Contract, or any subsequent contract or Amendment entered or referenced when the City is a party, are subject to the provisions of Florida Statutes Section 166.241, as amended, regardless of whether a particular obligation has been expressly so conditioned. Since the City Commission appropriates funds annually on a fiscal year basis, the City's legal liability for the payment of any costs will not arise unless and until the City Commission approves appropriations for the costs for the applicable fiscal year; nor will liability arise if a request for the appropriations is excluded from the budget that the City Commission approves. Notwithstanding the foregoing, no Commissioner, officer, employee, director, member or other natural person or agent of the City will have any personal liability in connection with a breach of the provisions of this Section or in the event of the City's default under this Section. This Contract does not constitute an indebtedness of the City nor an obligation of the City to levy or pledge any form of taxation nor an obligation for which the City has levied or pledged any form of taxation.

C. Termination for Abandonment. If the CMAR abandons performance under this Contract, the City Manager or designee may terminate this Contract upon three (3) calendar days' written notice to the CMAR indicating the intention to do so. The written notice must state the evidence indicating the CMAR's abandonment.

D. Termination for Non-Civility. The CMAR agrees that its employees and agents will communicate with City employees and members of the public in a civil manner. Any aspect of the CMAR's performance, including complaints received from City employees or members of the public, may cause the City to terminate this Contract in accordance with the provisions contained herein.

E. CMAR's Termination. The CMAR may terminate this Contract only in the event the City fails to pay the CMAR's properly documented and submitted payment request within ninety (90) calendar days of the Administrative Agent's approval, or if the City suspends a project for longer than ninety (90) calendar days.

F. Court Proceedings. The City Manager or designee reserves the right to terminate this Contract immediately in the event the CMAR is placed in either voluntary or involuntary bankruptcy, a receiver is appointed for the CMAR, or an assignment is made for the benefit of creditors.

G. Breach. In the event the CMAR is in breach of this Contract, the City must provide written notice of the breach and the CMAR will have ten (10) calendar days to cure, calculated from the date the CMAR receives the notice. If the CMAR fails to cure within the ten (10) calendar days, the City Manager or designee may immediately terminate the Contract and/or refuse to make any additional payment, in whole or in part, and may demand the return of a portion or the entire amount previously paid to the CMAR due to:

(1) The quality of a portion or all the CMAR's Work not being in accordance with the requirements of this Contract;

(2) The quantity of the CMAR's Work not being as represented in the CMAR's payment request, or otherwise;

(3) The CMAR's rate of progress is, in the City's opinion, whether Substantial Completion, Final Completion, or both, inexcusably delayed;

(4) The CMAR's failure to pay the CMAR's project related obligations, including but not limited to subcontractors, laborers, materialmen, equipment, and other suppliers;

(5) Claims made, or likely to be made, against the City or its property;

(6) Loss caused by the CMAR;

(7) The CMAR's failure or refusal to perform any of its obligations to the City, after written notice and a reasonable opportunity to cure, as set forth above; or

(8) Violation of any local, state, or federal law in the performance of this Contract constitutes a breach of this Contract.

H. Waiver. Any delay or failure to enforce any breach of this Contract by either the City or the CMAR will not be binding upon the waiving party unless the waiver is in writing. In the event of a written waiver, the waiver will not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach must not operate or be construed to operate as a waiver of any subsequent default or breach.

I. E-Verify Violation.

(1) If the City has a good faith belief that the CMAR has knowingly violated Florida Statutes Section 448.09(1), the City may immediately terminate this Contract.

(2) If the City has a good faith belief that a subcontractor has knowingly violated Florida Statutes Section 448.09(1), but the CMAR has otherwise complied, then the City must without delay notify the CMAR and order the CMAR to immediately terminate its contract with the subcontractor.

(3) The CMAR must comply with Florida Statutes Section 448.095(2) for any challenge to termination of this Contract under this Section.

J. Remedies. In the event of a default or breach of the Contract terms, the City may avail itself of every remedy given to it now existing at law or in equity, and every remedy must be in addition to every other remedy given or otherwise existing and may be exercised from time to time and as often and in the order as the City deems expedient. The exercise, or the beginning of the exercise, of one remedy must not be deemed to be a waiver of the right to exercise, at the same time or thereafter, any other remedy. The City's rights and remedies set forth in this Contract are not exclusive and are in addition to any other rights and remedies available to it in law or in equity.

XIII. NOTICES.

Any notice, demand, communication, or request required or permitted by this Contract must be sent by certified mail, return receipt requested, or by delivery through any nationally recognized courier service (Federal Express, UPS, USPS, and others) that provides evidence of delivery, at the address provided for receipt of notices in this Contract and e-mailed to:

As to the City:
Kimberly Humphrey, Administrative Agent
City of North Port
Public Works Department
1100 N Chamberlain Blvd
North Port, Florida 34286
941.240.8093
khumphrey@northportfl.gov

With copies of claims and demands sent to:
City of North Port, Florida
City Attorney's Office
4970 City Hall Boulevard
North Port, Florida 34286
northportcityattorney@northportfl.gov

As to CMAR:
Ajax Building Company, LLC
William Byrne
1080 Commerce Blvd
Midway, Florida 32343
813.792.3900
Bill.Byrne@ajaxbuilding.com

Notices are effective when received at the addresses specified above. Changes to the respective addresses may be made from time to time by either party by written notice. This Section must not be construed to restrict the transmission of routine communications between representatives of the CMAR and the City.

XIV. ATTORNEY'S FEES.

In any proceedings between the parties arising out of or related to this Contract, the prevailing party must be reimbursed all costs, expenses, and reasonable attorneys' fees through all proceedings, at both trial and appellate levels.

XV. FORCE MAJEURE

A. Should performance of any obligation created under this Contract become illegal or impossible by reason of:

(1) A strike or work stoppage, unless caused by a negligent act or omission of either party;

(2) An act of God, tornado, hurricane, flood, sinkhole, fire, explosion, landslide, earthquake, epidemic, pandemic, quarantine, pestilence, or extremely abnormal and excessively inclement weather;

(3) An act of a public enemy, act of war, terrorism, effect of nuclear radiation, blockage, insurrection, riot, civil disturbance, state of martial law, or national or international calamity;

(4) A declared emergency of the federal, state, or local government; or

(5) Any other like event that is beyond the reasonable control of the non-performing party;

then the performance of the obligation is suspended during the period of, and only to the extent of, the prevention or hindrance, provided that:

(6) The non-performing party provides written notice within five (5) calendar days of the event of *force majeure*, describing the event in sufficient detail, including but not limited to: the nature of the occurrence, a good faith estimate of the duration of the delay, proof of how the event has precluded the non-performing party from performing, and the means and methods for correcting the delay; and continues to furnish timely reports of all actions required for it to commence or resume performance of its obligations under this Contract;

(7) The excuse of performance is no greater in scope or duration than required by the event of *force majeure*;

(8) No obligations of either party that arose before the *force majeure* are excused as a result of the event of *force majeure*; and

(9) The non-performing party uses all reasonable diligence to remedy its inability to perform.

B. Economic hardship of a party does not constitute an event of *force majeure.* A party must not be excused from performance due to forces that it could have reasonably prevented, removed, or remediated prior to, during, or immediately after their occurrence.

C. The City has the right to suspend the non-performing party's affected obligations under this Contract during, but not longer than, the continuance of the event of *force majeure* and a reasonable time thereafter as may be required to commence or resume performance of its obligations. Notwithstanding the above, performance will not be excused under this Section for a period exceeding two (2) consecutive months, provided that in extenuating circumstances, the City may excuse performance for a longer term.

D. The term of this Contract and the term of a project, or both will be extended by a period equal to that during which the non-performing party's performance is suspended under this Section.

XVI. PUBLIC RECORDS

In accordance with Florida Statutes Section 119.0701, the CMAR must comply with all public records laws, and must specifically:

A. Keep and maintain public records required by the City to perform the service.

(1) The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies. (*See* http://dos.state.fl.us/library-archives/records-management/general-records-schedules/)

(2) "Public records" means and includes those items specified in Florida Statutes Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made, or received pursuant to law or ordinance or in connection with the transaction of official business with the City. The CMAR's records under this Contract include but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, e-mails and all other documentation generated during the term and in furtherance of this Contract.

B. Upon request from the City's custodian of public records, provide the City, at no cost, with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for by law. All records kept electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

C. Ensure that Project records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and if the CMAR does not transfer the records to the City following completion of the Contract, the CMAR must maintain the project records for the time specified in General Records Schedule GS1-SL for State and Local Government Agencies.

D. Upon completion of the Contract, transfer, at no cost to the City, all public records in the CMAR's possession or keep and maintain public records required by the City to perform the service. If the CMAR transfers all public records to the City upon completion of the Contract, the CMAR must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CMAR keeps and maintains public records upon the completion of the Contract, the CMAR must comply with all applicable requirements for retaining public records.

E. **IF THE CMAR HAS QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO THE CMAR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

CITY CLERK, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286
941-429-7063 OR HOTLINE 941-429-7270
publicrecordsrequest@northportfl.gov.

F. Failure of the CMAR to comply with these requirements constitutes a breach of this Contract. Further, the CMAR may be subject to penalties under Florida Statutes Section 119.10.

XVII. PRECEDENCE OF DOCUMENTS

A. In the event of a conflict between or among the documents or any ambiguity or missing specifications or instruction, the following priority is established:

(1) This Contract and all attachments, exhibits, and amendments.

(2) The RFP.

(3) The CMAR's Construction Documents.

(4) Specific direction from the City Manager or designee.

XVIII. MISCELLANEOUS

A. Authority to Execute. The signature by any person to this Contract will be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act.

B. Binding Effect/Counterparts. By the signatures affixed to this Contract, the parties intend to be bound by the terms and conditions hereof. This Contract is binding upon and will inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns. It may be signed in counterparts.

C. Governing Law and Venue. The laws of the State of Florida govern the rights, obligations, and remedies of the parties under this Contract. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Contract are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, and the United States District Court for the Middle District of Florida.

D. Continuation of Services During Dispute. Unless otherwise agreed in writing, the CMAR is required to continue its services and all other obligations under this Contract during the pendency of claim or dispute including, but not limited to, mediation or judicial proceedings.

E. Opt-out of Florida Statutes Chapter 558. To the extent Florida Statutes Chapter 558 is applicable, the parties expressly opt out of the requirements of Chapter 558, within the meaning of Florida Statute Section 558.005(1).

F. No Agency. Nothing contained in this Contract will be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the parties, it being understood and agreed that no provision, or any acts of the parties will be deemed to create any relationship between them other than that as detailed.

G. Severability. In the event any court holds any provision of this Contract to be illegal, invalid, or unenforceable, the remaining provisions must be valid and binding upon the parties. One or more

waivers by either party of any breach of any provision, term, condition, or covenant will not be construed as a waiver of a subsequent breach by the other party.

H. Headings. The descriptive titles appearing in each respective paragraph are for convenience only and are not a part of this Contract and do not affect its construction.

I. Complete Contract. This Contract incorporates and includes all prior negotiations, correspondence, agreements, or understandings between the parties, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Contract that are not contained in this document. This Contract supersedes all other agreements between the parties, whether oral or written, with respect to the subject matter.

J. Amendment. No amendment, change, or addendum to this Contract is enforceable unless agreed to in writing by both parties and incorporated into this Contract. Any amendment changing the City's financial obligations under this Contract requires the City Commission's approval. The City Commission hereby authorizes the City Manager or designee to approve and execute all contract amendments on the City's behalf that do not change the City's financial obligations under this Contract.

K. Assignment. The CMAR must not assign this Contract or any right or responsibility without the City's prior written consent.

L. Non-Discrimination. The City does not discriminate on the basis of race, color, national origin, sex, age, disability, family, or religious status in administration of its programs, activities, or services. The CMAR will not administer this Contract in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

XIX. SUPPLEMENTAL DOCUMENTS

The following exhibits and supplemental documents are attached and incorporated fully as part of this Contract. The City has the right to incorporate all the following additional attachments and supplemental terms and conditions in any Work Assignment, and as amended from time to time by any grant agencies.

EXHIBIT A – SCOPE OF SERVICES

EXHIBIT B – PROJECT SCHEDULE

EXHIBIT C – FEE SCHEDULE

EXHIBIT C-1 - FEE SCHEDULE FOR WORK ASSIGNMENT

EXHIBIT D –WORK ASSIGNMENT

__X__ ATTACHMENT 1.1 – GENERAL INSURANCE

__X__ ATTACHMENT 1.2 – PROFESSIONAL LIABILITY INSURANCE

_____ ATTACHMENT 1.3 – ENVIRONMENTAL AND POLLUTION LIABILITY INSURANCE

_____ ATTACHMENT 1.4 – BUILDER'S RISK

_____ ATTACHMENT 2.1 – GENERAL INDEMNITY, DEFENSE, AND RELEASE

__X__ ATTACHMENT 2.2 – CONSTRUCTION RELATED SERVICES INDEMNITY, DEFENSE, & RELEASE

__X__ ATTACHMENT 3 – FEMA PROVISIONS

_____ ATTACHMENT 4 – DAVIS BACON ACT – MINIMUM WAGE RATE

__X__ ATTACHMENT 5 – CERTIFICATION REGARDING LOBBYING

__X__ ATTACHMENT 6 – NON-COLLUSIVE AFFIDAVIT

__X__ ATTACHMENT 7 – CONFLICT OF INTEREST FORM

__X__ ATTACHMENT 8 – PUBLIC ENTITY CRIME INFORMATION

__X__ ATTACHMENT 9 – DRUG-FREE WORKPLACE FORM

_____ ATTACHMENT 10 – SWORN STATEMENT: THE FLORIDA TRENCH SAFETY ACT

__X__ ATTACHMENT 11 – SCRUTINIZED COMPANY CERTIFICATION FORM

__X__ ATTACHMENT 12 – VENDOR'S CERTIFICATION FOR E-VERIFY SYSTEM

_____ ATTACHMENT 13 – PERFORMANCE AND PAYMENT BOND REQUIREMENTS

_____ ATTACHMENT 14 – PERFORMANCE AND PAYMENT BOND

__X__ ATTACHMENT 15 – CERTIFICATION REGARDING DEBARMENT, AND SUSPENSION

__X__ ATTACHMENT 16 – CONTRACT CHANGES

__X__ ATTACHMENT 17 – SANCTIONS AND PENALTIES

__X__ ATTACHMENT 18 – TERMINATION FOR CONVENIENCE

IN WITNESS WHEREOF, the parties have executed this Contract as follows.

CONSTRUCTION MANAGER AT RISK
AJAX BUILDING COMPANY LLC

By: _____
WILLIAM P. BYRNE, CEO

ACKNOWLEDGEMENT

STATE OF Florida
COUNTY OF Pinellas

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization, on this 2nd day of May 2023, by William P. Byrne [insert person's name] as CEO [insert title] for Ajax Building Company, LLC.

_____
Notary Public

✓ Personally Known OR ___ Produced Identification
Type of Identification Produced _____

KAREN B. SANTIAGO
Commission # GG 327128
Expires June 6, 2023
Bonded Thru Troy Fain Insurance 800-385-7019

Approved by the City Commission of the City of North Port, Florida on May 23 2023.

CITY OF NORTH PORT, FLORIDA

A. JEROME FLETCHER II, ICMA-CM, MPA
CITY MANAGER

ATTEST

HEATHER FAUST, MMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

AMBER L. SLAYTON, B.C.S.
CITY ATTORNEY

EXHIBIT A

SCOPE OF SERVICES

I. Phase I: Preconstruction Services

The scope of work is a general guide to the work the City expects to be performed by the CMAR and is not a complete listing of all services that may be required or desired.

The general scope of work to be provided to accomplish the City's objectives includes a broad range of construction manager at risk services related to design, permitting and construction management of miscellaneous projects as may be designated by the City. The provision of Construction Management Services on an as needed basis, including but not limited to roofing, HVAC, minor remodel, and small projects where a scope of work is not anticipated to exceed $4,000,000.00 or a study activity when the fee does not exceed $500,000. The projects will involve buildings, facilities, and sites throughout the City, as requested by the City.

Work Assignments may include, but are not necessarily limited to:

- Services described in this Scope of Services, and specific scope of services for each Work Assignment
- Feasibility studies
- Master planning
- Interior build-out or remodeling
- Building Information Modeling (BIM)
- Project permitting services
- Development of construction cost options
- Assistance in the development of construction plans and specifications
- Services during construction
    - Construction administration services
    - Construction observation services
    - Completion of project close-out activities including Record Drawings in multiple electronic formats
    - Alternative project delivery methodologies
    - Value Engineering

The Work Assignment specifies the CMAR functions and responsibilities for each project. The following categories describe the varies functions and responsibilities that the CMAR performs as specified in the Work Assignment or as otherwise directed by the Administrative Agent.

II. Design Support

A. Technical Support and Coordination

The CMAR must provide technical support to the City as required or as directed throughout the entire preconstruction phase.

B. Design Phase

(1) Design Support

The CMAR must provide design support during Preconstruction Phase I, including but not limited to the following:

(a) Provide baseline schedule and a cost estimate for each project.

(b) Establish, implement, and maintain quality control standards.

(c) Provide alternate systems evaluation and constructability studies throughout Phase I.

(d) Participate in constructability reviews and preliminary budget estimates at requested periods during Phase I.

(e) Advise the Project Team of ways to gain efficiencies in project delivery and reduce overall delivery time.

(f) Provide long-lead procurement studies.

(g) Advise the Project Team when choosing sustainable building materials, as well as recommendations for building lifespan and efficient operations and maintenance.

(h) Identify items that have the potential to be procured directly by the City.

(i) Upon the Administrative Agent's request, provide copies of bids and quotations solicited from prospective Trade Contractors, subcontractors, and suppliers.

(j) Review and provide comments with plans and specifications at each phase of each project.

(2) Project Budget

The CMAR must:

(a) Prepare a detailed construction phase project budget baseline for all cost categories within twenty-one (21) calendar days following the Design Consultant's submission of schematic deliverables (30% complete Construction Documents).

(b) Identify all major assumptions used in creating the project budget.

(c) Meet with the Administrative Agent to ensure that cost reports capture all applicable expenditures in a format appropriate for reporting performance and for cost allocation.

(d) Obtain approval of cost and reporting formats.

(e) Provide consistent and complete budget and performance reporting.

(f) Provide detailed cost estimating and knowledge of marketplace conditions.

(g) Provide preliminary and detailed scheduling analysis and periodic updates for the project construction, including a Schedule of Values.

(h) Provide value engineering throughout all phases of each project.

(i) Provide estimations of the project costs throughout Phase I.

(j) Submit a proposed GMP for the City's consideration. Upon the City's request, include in the GMP proposal provisions for the City to direct purchase as practical.

(3) Schedule

The CMAR must:

(a) In coordination with the Design Consultant, identify all required reviews and approvals, and appropriate levels of information necessary for action and timely response.

(b) Prepare and maintain a Project Schedule, including activities for the Design Consultant and the CMAR and identifying tasks that may require the City's action. The Project Schedule is a critical path schedule and must include all construction, permitting, and facility start-up activities as well as project milestones.

(c) Reflect the schedule for preparation and submission of the GMP proposal and all scheduling efforts.

(d) Assist in developing drawing package issuance schedules to meet requirements of the Project Schedule.

(e) Provide for construction phasing and scheduling and determine a comprehensive logistics plan.

(f) Provide a site utilization plan for all construction activities for each project or portion of the project.

(g) Assist the Design Consultant as by the CMAR, or City staff with the timing of permit application processes.

(h) The Project Schedule must include all major sequences of the preconstruction services and construction work, material supplies, long-lead procurement, the Design Consultant's approval of shop drawings, and performance testing requirements.

C. Reporting

The CMAR must prepare and submit a monthly narrative progress report and other reports as necessary and appropriate, including the following topics:

(1) For the Invoice Reporting Period

(a) Accomplishments

(b) Status of milestones

(c) Deliverables submitted

(d) Problems encountered / decisions or adjustments recommended, and approved modifications, if any.

(2) For the Next Reporting Period

(a) Objectives

(b) Milestones

(c) Deliverables

(d) Scheduled meetings

(3) General

(a) Schedule update

(b) Other

D. Design Coordination

The City will determine the need for a Design Consultant on a project-by-project basis. Throughout the Preconstruction Phase I of each project, the CMAR must coordinate with the Design Consultant to assist in preparing the final pricing documents and Construction Documents.

(1) Coordination with the Project Team

The CMAR must:

(a) Coordinate all activities with the Project Team, any other City contractors, vendors or consultants, and other parties.

(b) Coordinate and assist with all activities related to the design of infrastructure and utilities serving the site or impacted by a project.

(c) Continually evaluate quality, safety, and environmental factors throughout design.

(2) Design Coordination and Review

The CMAR must:

(a) Review and recommend changes to drawings, specifications, and Construction Documents as appropriate.

(b) Participate in project meetings as the Administrative Agent directs.

(c) Monitor coordination of all equipment's mechanical/electrical requirements.

(d) Analyze the cost-effectiveness of design elements and advise the City of findings.

(e) Conduct ongoing review of design documents for completion and coordination of design, with input from the Design Consultant, engineering discipline consultants, and equipment vendors.

(f) Coordinate project utility requirements with utility companies.

(g) Review site logistics and sequence of construction for incorporation in the GMP.

(h) Assist the Design Consultant by reviewing the Construction Documents for each percentage complete design, unless otherwise directed by the Administrative Agent, for the elimination of conflicts, omissions, dimensioning, and other potential problems. The CMAR must bring all noted matters to the attention of the Design Consultant and the Administrative Agent in writing. The quality of documents is paramount in developing the project plans.

(i) Advise the Administrative Agent of the availability of materials, Trade Contracts, and lower-tier subcontractors, as well as any scheduling restraints.

(j) Identify long lead time items and recommend prepurchase for these or other items subject to expected price volatility or availability.

(k) Prepare any recommended or requested alternate proposals and assist the Design Consultant, and City staff, in identifying elements of the design that can be "add" or "deduct" alternates.

(3) Value Engineering Program

The CMAR must:

(a) Investigate alternate solutions systems, materials, or techniques to achieve project requirements economically and consistent with the City's objectives.

(b) Develop and implement a value-engineering program for all major facility and site elements, systems, and materials.

(c) Advise the City on the cost of building systems and materials.

(d) Upon the City or the Design Consultant requests, prepare comparative analysis of alternate systems and materials.

(e) Review documents at the conclusion of design development for value-engineering options.

(f) Submit value-engineering recommendations to the Project Team on an ongoing basis, monitor design changes, and note whether they will have an impact on the project budget.

(4) Budget and Schedule Refinement

The CMAR must:

(a) Forecast construction costs based on completed project documents.

(b) Prepare a detailed cost estimate based on completed design development drawings.

(c) Analyze deviations from the previous cost estimate.

(d) Forecast impact of these deviations.

(e) Recommend corrective action if the cost estimate exceeds a level of acceptance to the City.

(f) Incorporate revised cost estimates into the project budget.

(g) Recommend to the City any changes necessary to maintain the budget requirements.

(h) Report progress to the Project Team.

(i) Monitor and maintain the Project Schedule consistent with best industry practices.

(j) Identify design task milestones and associated deadlines that the Design Consultant must meet to maintain the Project Schedule.

(k) Identify decisions the City or others must make to keep the project on schedule.

(l) Provide a project budget within 28 calendar days following the Design Consultant's submission of the Design Development deliverables (60% complete Construction Documents)

(m) Upon the City's request, provide a project duration cash flow projection.

III. GMP proposal

A. Preparation

(1) When drawings and specifications for a project are complete, the CMAR must prepare the GMP proposal for each project's construction. The proposed GMP must be prepared in accordance with this Contract, the Scope of Services, and the Preconstruction Schedule. The CMAR acknowledges and agrees that the GMP proposal must include:

(a) The Scope of Services under the RFP, this Contract, the Construction Documents, the Work Assignment and any other material documents that were used in preparation of the GMP. Notwithstanding the foregoing, if the Construction Documents fail to depict an item that is essential for operations, the CMAR must provide and install the item as part of the GMP. If the Construction Documents contain inconsistencies, discrepancies, or omissions of which the CMAR has knowledge, or that are reasonably inferable from the Construction Documents, the CMAR will not be entitled to a Project Schedule extension, or a GMP adjustment for the items and the CMAR must correct, and complete the items;

(b) A list of all allowances and the statement of their basis;

(c) A list of all material clarifications and assumptions made in preparing the GMP as necessary to supplement the information contained in the drawings and specifications. The list must not include restatements of any existing provisions of this Contract;

(d) A statement of the estimated costs (organized by trade categories), allowances, contingency, and other items, including a list of all fees or other costs that comprise the GMP;

(e) The date of Substantial Completion upon which the proposed GMP is based; and

(f) A schedule of issuance dates for the Construction Documents upon which the proposed GMP is based.

(2) The CMAR acknowledges that the GMP includes an amount designated as the City Contingency. The CMAR is only eligible to receive the City Contingency if the City approves a Field Change or Change Order/Amendment to this Contract or as otherwise provided in this Contract. Any Change Order/Amendment must specify the portion of the City Contingency being made available and the purpose.

(3) The GMP must be inclusive of the arrangement and supply of all job-site facilities, including workstations equipped with telephones, desks, and computer or other electronic equipment that is reasonably necessary for the Project Team to perform the management, inspection, and supervision of each project's construction.

(4) The CMAR acknowledges that the Design Consultant may modify the Construction Documents from time to time, and if the City presents the CMAR with modified Construction Documents, the CMAR must complete each project as modified.

(5) The GMP must be within the project budget or the City's amended scope and must be based upon the Construction Documents. The CMAR must provide for each project, all materials, or labor, or both, as shown in and inferred by the Construction Documents as a part of each project; and as necessary to complete each project. An express reference in the Construction Documents to the material or labor is not required.

(6) If the Administrative Agent directs, the CMAR must prepare a proposal for a phase or portion of construction of each project based upon less than 100% complete plans. Unless otherwise specified in an Amendment, the preconstruction services and any Construction Phase authorized by an

Amendment would proceed concurrently and all the CMAR's services as defined in this Contract and the Amendment would apply.

(7) The GMP proposal is subject to the City's acceptance, at the City's sole discretion. If the City wishes to accept the GMP proposal, the City must prepare a contract amendment, incorporating the GMP along with any other provisions the City deems necessary for the performance of the construction phase of each project. In the event the City does not accept the GMP proposal, the Administrative Agent will inform the CMAR in writing; this notice constitutes an immediate Contract termination and neither party will have any obligation to the other regarding the Construction Phase of each project.

B. Additional Requirements

(1) During development of the proposed GMP proposal and during subsequent negotiations as appropriate or as requested by the Administrative Agent, the CMAR must:

(a) Prepare a bidders' list identifying a minimum of three firms to bid for each bid package.

(b) Prepare written bid packages with the Project Team. Packages must be comprehensive, must be complete, and must cover all aspects of the assigned bid division or definition of work.

(c) Distribute bid information to bidders.

(d) Respond to bidder's questions during bidding.

(e) Respond to bidder's questions during bidding.

(f) Review bids received with the Project Team.

(g) Obtain clarification of any bidder's bid qualifications as needed.

(h) Prepare comparative analysis of bids.

(i) Review voluntary alternate recommendations.

(j) Review alternates and recommend acceptance of rejection.

C. Procurement.

(1) The CMAR must keep costs as low as possible through aggressive use of competitive bidding procedures for all work.

(2) The CMAR must direct a well-coordinated procedure for all bid packages and must obtain a minimum of three verbal competitive quotations for all packages with an estimated value over $5,000 and under $25,000, and a minimum of three written competitive quotations for those packages with an estimated value over $25,000.

(3) The CMAR must comply with all applicable laws and grant requirements.

(4) The CMAR must stimulate bidder interest in the marketplace and identify and reasonable encourage bidding competition through various meetings, presentations, mail-outs, telephone conference, and the like. The CMAR must obtain a minimum of three competitive bids for each trade, unless otherwise directed by the Administrative Agent. The CMAR must provide the Administrative Agent with the opportunity to review and approve all bids before their acceptance. The CMAR must carry out an active program of stimulating interest of qualified contractors, including minority contractors, in bidding on the work and of familiarizing those bidders with each project's requirements.

(5) The CMAR must work with the Design Consultant to ensure that completed bid documents used in conjunction with the City's procurement forms and contract templates comprehensively establish all the binding obligations for full performance through lump sum bidding within the framework of the GMP.

(6) The CMAR must complete the following activities for specialty equipment:

(a) Coordinate with the Design Consultant during development of equipment specifications with operational criteria. Review specifications and incorporate furniture, fixtures, and equipment requirements and City related items into design/construction process.

(b) Solicit proposals from qualified vendors for equipment, installation, and maintenance.

(c) Coordinate proprietary equipment specifications obtained from the successful vendor with construction drawings and details.

(d) Obtain at least three (3) competitive bids for each bid package.

D. Acceptance or Rejection of GMP Proposal

Nothing contained in this Contract requires the City to accept any of the CMAR's proposals. Further, the CMAR agrees that the City has the unrestricted discretion to reject the CMAR's proposal.

EXHIBIT B

PRECONSTRUCTION SCHEDULE

[insert schedule pursuant to Section IIB]

Description	Estimated Calendar Days from Notice to Proceed to Completion

EXHIBIT C

FEE SCHEDULE

NORTH PORT CONTINUING CONTRACT SERVICES

CMAR 2023-17 Reimbursable Rates - 2023

Ajax

Position	Rate
Principle	$212.02
Vice President of Operations	$190.82
Regional Director	$173.15
Project Executive	$166.08
Operations Manager	$148.41
Senior Project Manager	$120.14
Project Manager	$98.94
Assistant Project Manager	$77.74
Project Engineer	$63.61
General Superintendent	$151.95
Senior Superintendent	$123.68
Project Superintendent	$98.94
Assistant Superintendent	$77.74
Field Engineer	$63.61
Project Administrator	$49.47
Chief Estimator	$120.14
Senior Estimator	$98.94
Estimator	$88.34
BIM Coordinator	$84.81

Rates inclide direct labor and labor burden (fringes and insurance) only. No vehicle compensation is included.

EXHIBIT C-1

FEE SCHEDULE – WORK ASSIGNMENT

Fixed fee for services described in the Scope of Services:	$_____
Additional services (not-to-exceed Amount), if authorized:	$_____
TOTAL CONTRACT NOT-TO-EXCEED AMOUNT	**$_____**

Notes:

1. Additional services must be authorized in writing by the City prior to performing any such services.

2. Invoicing for services rendered must be monthly.

ATTACHMENT D

City of North Port
CONTINUING CONTRACT NO. 2023-17.003
WORK ASSIGNMENT

CONSTRUCTION MGR at RISK	**Ajax Building Company, LLC**
CONTINUING CONTRACT TITLE	**Contract 2023-17.003- Construction Manager at Risk Preconstruction Services**

THIS WORK ASSIGNMENT

WORK ASSIGNMENT #	
SHORT TITLE	
Attach justification and supporting documentation	
DATE SUBMITTED	
AMOUNT (LUMP SUM)	
SCHEDULED COMPLETION	

SUPPLEMENTAL EXHIBITS AND ATTACHMENTS APPLY TO THIS WORK ASSIGNMENT.

CONTRACT AND BUDGET OVERVIEW FISCAL YEAR _____

	DEPARTMENT	**CITYWIDE** (completed by Purchasing)
TOTAL OF PREVIOUS ASSIGNMENTS	$	$
THIS WORK ASSIGNMENT	$	$
TOTAL WORK ASSIGNMENTS	$	$
ACCOUNT NO/PROJECT NO		

All work assignments require City Manager approval. In presenting this work assignment, it is understood that:

1. Unless specified herein, work does not involve watercraft, boat piers and/or other activities requiring additional workers compensation endorsements.
2. Contact or involvement with hazardous materials is not anticipated, should hazardous materials be encountered, the City shall be informed.
3. THIS TOTAL WORK ASSIGNMENT, INCLUDING CHANGE ORDERS AND/OR AMENDMENTS SHALL NOT EXCEED $500,000 AND ANY RESULTING CONSTRUCTION SHALL NOT EXCEED $4,000,000 PURSUANT TO Florida Statutes Section 287.055.

SUBMITTED BY:

CMAR **DATE**

APPROVED BY:

DEPARTMENT DIRECTOR **DATE**

BUDGET ADMINISTRATOR **DATE**

PURCHASING **DATE**

FINANCE DIRECTOR **DATE**

ASSISTANT CITY MANAGER **DATE**

CITY MANAGER **DATE**

Attachment 1.1

GENERAL INSURANCE

A. Insurance.

(1) Before performing any work pursuant to this Contract, the Contractor must procure and maintain, during the life of this Contract, the insurance listed below against all claims of injury to persons or damage to property which may arise from or in connection with its performance of the Contract work, unless otherwise specified. The policies of insurance must be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the State of Florida Department of Financial Services, and meet a minimum financial A.M. Best and Company, Inc. rating of no less than "A - Excellent: FSC VII." No changes can be made to these specifications without prior written approval by the City Manager or designee. The City Manager or designee may alter the amounts or types of insurance policies required by this Contract upon agreement with the Contractor. The insurance policies must remain in place until all of the Contractor's and subcontractor(s)' obligations and warranty periods in place pursuant to this Contract have been discharged or satisfied.

(2) The below insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City in no way warrants that the minimum limits are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work done pursuant to this Contract by the Contractor, its agents, representatives, employees, or subcontractors. Contractor is free to purchase additional insurance as it may determine necessary. The extent of Contractor's liability for indemnity of the City must not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between the Contractor and its carrier.

B. Workers' Compensation and Employers' Liability Insurance. Coverage to apply for all employees at the statutory limits provided by state and federal laws. The policy must include proof of current Worker's Compensation coverage or Worker's Compensation exemption (notarized affidavit)

C. Comprehensive Commercial General Liability Insurance. The Contractor must procure and maintain, and require all subcontractors to procure and maintain, during the life of this Contract, a comprehensive commercial general liability policy, including but not limited to bodily injury, property damage, broad form contractual liability and Explosion, Collapse and Underground (XCU) coverage. The general aggregate limit must apply separately to this Contract, or the general aggregate limit must be twice the required occurrence limit.

The policy must include General Liability with a limit of $2,000,000 for General Aggregate; $2,000,000 for each occurrence; $2,000,000 for Products and Completed Operations; $100,000 for damage to rented premises; and $100,000 for Fire Damage. Proof of insurance must be filed by the Contractor with the City within **ten (10) calendar days** after the Effective Date of this Contract.

D. Automobile Liability Insurance. To include all vehicles owned, leased, hired and non-owned vehicles. Proof of Commercial Auto Liability Insurance.

E. Waiver of Subrogation. All required insurance policies, except for Workers' Compensation, are to be endorsed with a Waiver of Subrogation. The insurance companies, by proper endorsement or through

other means, must agree to waive all rights of subrogation against the City, its Commissioners, officers, officials, employees, volunteers, and the City's insurance carriers, for losses paid under the terms of these polices that arise from the contractual relationship or work performed by the Contractor for the City. It is the Contractor's responsibility to notify its insurance company of the Waiver of Subrogation and request written authorization or the proper endorsement. ADDITIONALLY, THE CONTRACTOR, ITS OFFICERS, OFFICIALS, AGENTS, EMPLOYEES, VOLUNTEERS, AND ANY SUBCONTRACTORS, AGREE TO WAIVE ALL RIGHTS OF SUBROGATION AGAINST THE CITY AND ITS INSURANCE CARRIERS FOR ANY LOSSES PAID, SUSTAINED, OR INCURRED, BUT NOT COVERED BY INSURANCE, THAT ARISE FROM THE CONTRACTUAL RELATIONSHIP OR WORK PERFORMED. THIS WAIVER APPLIES TO ANY DEDUCTIBLES OR SELF-INSURED RETENTIONS FOR WHICH THE CONTRACTOR OR ITS AGENTS MAY BE RESPONSIBLE.

F. Policy Form.

(1) All policies required by this Contract, except for Workers' Compensation, or unless specific approval is given by Risk Management through the City's Purchasing Division, are to be written on an occurrence basis, and must name the City of North Port, Florida, its Commissioners, officers, agents, employees, and volunteers as additional insured as their interest may appear under this Contract. Claims Made Policies may be accepted for professional liability, hazardous materials and such other risks as are authorized by the City's Purchasing Division. All Claims Made Policies contributing to the satisfaction of the insurance requirements must have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, Contractor must purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.

(2) Insurance requirements itemized in this Contract, and required of the Contractor, must be provided by or on behalf of all subcontractors to cover their operations performed under this Contract. The Contractor is responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to its subcontractors.

(3) Each insurance policy required by this Contract must:

(a) Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.

(b) Be endorsed to state that coverage must not be suspended, voided, or cancelled by either party except after notice is delivered in accordance with the policy provisions. The Contractor is to notify the City's Purchasing Division of any occurrence by written notice via certified mail, return receipt requested.

(4) The City retains the right to review, at any time, coverage, form, and amount of insurance.

(5) The Contractor is solely responsible for payment of all premiums for insurance required in this Contract and is solely responsible for the payment of all deductibles, SIR (self-insured retentions), any loss or portion of any loss that is not covered by any available insurance policy, and retention as set forth in the policies, whether the City is an insured under the policy. Contractor's insurance is considered primary for any loss, regardless of any insurance maintained by the City.

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(6) All certificates of insurance must be on file with and approved by the City before commencement of any work done pursuant to this Contract. All required certificates of insurance must be accompanied by a copy of the additionally insured documents/endorsements (CG 20101185 or combination of CG 2010370704 and CG 20370704). Certificates of insurance evidencing Claims Made or Occurrences form coverage and conditions to this Contract, as well as the Contract number and description of work, are to be furnished to the City's Purchasing Division at 4970 City Hall Boulevard, Suite 337, North Port, FL 34286 prior to commencement of the work and a minimum of **thirty (30) calendar days** prior to expiration of the insurance Contract when applicable. All insurance certificates must be received by the City's Purchasing Division before the Contractor commences or continues work. The certificate of insurance issued by the underwriting department of the insurance carrier must certify compliance with the insurance requirements of this Contract.

(7) Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed pursuant to this Contract must be provided to Contractor's insurer(s) and the City's Purchasing Division as soon as practicable after notice to the insured Contractor.

Attachment 1.2

PROFESSIONAL LIABILITY INSURANCE

The Consultant must procure and maintain, and require all subconsultants to procure and maintain, during the life of this Contract, professional liability insurance with a minimum **$2,000,000** per occurrence; and with a **$2,000,000** policy term general aggregate. Coverage shall be extended beyond the policy year term either by a supplemental extended reporting period (ERP) with as great of duration as available, with no less coverage and reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made. The City prefers all professional liability insurance be written on an Occurrence Form; however, in the event that the professional liability insurance required by this Contract is written on a claims-made basis, the Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained for a period of two (2) years or an extended reporting period (ERP) with tail coverage will be obtained and maintained for a period of two (2) years beginning at the time work under this Contract is completed.

UNLESS THE PARTIES HAVE AGREED TO AN OPT-OUT PURSUANT TO FLORIDA STATUTES SECTION 558.005(1), AN EMPLOYED DESIGN PROFESSIONAL, OR AN AGENT OF THE CONSULTANT IS NOT INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OF THE COURSE AND SCOPE OF THIS CONTRACT FOR ECONOMIC DAMAGES SO LONG AS THE CONSULTANT MAINTAINS THE LIMITS OF PROFESSIONAL LIABILITY INSURANCE AS PROVIDED IN THIS ATTACHMENT.

Attachment 2.2

PROFESSIONAL SERVICES INDEMNITY, DEFENSE, AND RELEASE

A. **TO THE EXTENT PERMITTED BY FLORIDA LAW, THE CONSULTANT MUST INDEMNIFY AND HOLD HARMLESS THE CITY, AND ITS OFFICERS AND EMPLOYEES, FROM LIABILITIES, DAMAGES, LOSSES, AND COSTS, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, TO THE EXTENT CAUSED BY THE NEGLIGENCE, RECKLESSNESS, OR INTENTIONALLY WRONGFUL CONDUCT OF THE CONSULTANT AND OTHER PERSONS EMPLOYED OR UTILIZED BY THE CONSULTANT IN THE PERFORMANCE OF THE CONTRACT WORK. THE CONTRACT DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE CITY OR ITS SUBDIVISIONS TO SUIT BY THIRD PARTIES.**

B. **FURTHER, THE CONSULTANT SHALL FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY FROM ALL SUITS, ACTIONS, DAMAGES, AND COSTS OF EVERY NAME AND DESCRIPTION, INCLUDING ATTORNEYS' FEES, ARISING FROM OR RELATING TO VIOLATION OR INFRINGEMENT OF A TRADEMARK, COPYRIGHT, PATENT, TRADE SECRET OR INTELLECTUAL PROPERTY RIGHT.**

C. The City must provide all available information and assistance that the **consultant** may reasonably require regarding any claim. In the event of a claim, the city must promptly notify the **consultant** in writing by prepaid certified mail (return receipt requested) or by delivery through any nationally recognized courier service (such as federal express or ups) which provides evidence of delivery, at the address provided for receipt of notices in this Contract.

D. The insurance coverage and limits required in this Contract may or may not be adequate to protect the city and such insurance coverage will not be deemed a limitation on the **consultant's** liability under the indemnity provided in this section. In any proceedings between the parties arising out of or related to this indemnity provision, the prevailing party shall be reimbursed all costs, expenses, and reasonable attorney fees through all proceedings (at both trial and appellate levels).

E. Nothing in this Contract shall be deemed to affect the rights, privileges and immunities of the city as set forth in Florida Statutes Section 768.28.

F. The terms of this section survive the termination or completion of this Contract work.

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FEMA PROVISIONS

Section 1: Prohibition on Contracting for Covered Telecommunications Equipment or Services

(a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim).

(b) *Prohibitions.*

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Exceptions.*

(1) This clause does not prohibit Contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

i. Are *not used* as a substantial or essential component of any system; *and*

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ii. Are *not used* as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

Section 2: Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Section 3: Equal Employment Opportunity

(a) This section applies if the contract is for a federally assisted construction contract. As defined in 41 C.F.R. § 60-1.3:

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(1) A *federally assisted construction contract* means "any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any federal program involving a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work."

(2) *Construction work* means as "the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction."

(3) *Contract* means "any Government contract or subcontract or any federally assisted construction contract or subcontract."

(4) Additional definitions pertaining to this section can be found at 41 C.F.R. § 60-1.3.

(b) Unless exempted in 41 C.F.R. Part 60, the following terms apply, and during the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The 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: 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. The 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.

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

(3) 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.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract 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.

(5) The 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.

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(6) The 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, 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) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract 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.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or contract 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 vendor. The Contractor will take such action with respect to any subcontract or contract as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided,* however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor 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 interests of the United States.

Section 4: Davis-Bacon Act

(a) This section applies when required by federal program legislation for prime construction contracts over $2,000. The Davis-Bacon Act only applies to the Emergency Management Performance Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, Transit Security Grant Program, Intercity Passenger Rail Program, and Rehabilitation of High Hazard Potential Dams Program. Unless otherwise stated in a program's authorizing statute, it *does not* apply to other FEMA grant and cooperative agreement programs, including the Public Assistance program. Where this section applies:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the

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particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either

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pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The City 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 the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be

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maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension

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of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees -

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is

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not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) 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 the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Section 5: Copeland Anti-Kickback Act

(a) This section applies only if the Davis-Bacon Act applies (see Section 4).

Attachment 3

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

(c) 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.

(d) 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.

Section 6: Contract Work Hours and Safety Standards Act

(a) This section applies to all procurements over $100,000 that involve the employment of mechanics, laborers, and construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(b) Where this section applies:

(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 (b)(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 (b)(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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The City 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 (b)(2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(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 paragraphs (b)(1) through (4) of this section.

(c) If this contract is only subject to Contract Work Hours and Safety Standards Act and not subject to the other statutes in 29 C.F.R. § 5.1, the following terms apply:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Section 7: Clean Air and Water

(a) This section applies if the contract is over $150,000.

(b) 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. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, FEMA, and the appropriate Environmental Protection Agency Regional Office. 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.

(c) 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. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, FEMA, and the appropriate Environmental Protection Agency Regional Office. 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.

Section 8: Suspension and Debarment

(a) If this contract is for $25,000 or more, or requires the consent of an official of a federal agency, then this contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's 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). The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C throughout the period of the contract.

Attachment 3

(b) This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

Section 9: Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of more than $100,000 shall file the FEMA-required certification found at 44 C.F.R. Part 18, Appendix A (attached hereto). Each tier certifies to the tier above that it will not and has not used federally 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 shall 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 certification(s) to the federal awarding agency.

Section 10: Procurement of Recovered Materials

(a) 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—

competitively within a timeframe providing for compliance with the contract performance schedule;

meeting contract performance requirements; or

at a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage: https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

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

Section 11: Access to Records

(a) The Contractor agrees to provide the City, the State of Florida, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(b) The 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.

(c) In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Attachment 3

Section 12: DHS Seal, Logo, and Flags

The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.

Section 13: Compliance with Federal Law

The Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

Section 14: No Obligation of Federal Government

The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

Section 15: False Claims

The 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.

Section 16: Affirmative Socioeconomic Steps

If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Section 17: Copyright and Data Rights

If the contract requires the Contractor or subcontractor to produce copyrightable subject matter or data, then the Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

Attachment 3

Section 18: Patent Rights

If this contract is a *funding agreement* as defined in 37 C.F.R. § 401.2(a), then the standard patents rights clause at 37 C.F.R. § 401.14 is hereby incorporated by reference as if fully set forth herein.

Attachment 5

CERTIFICATION REGARDING LOBBYING

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

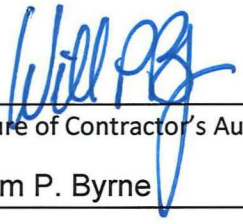
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection 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.

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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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. § 3801 et seq., apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Representative

William P. Byrne

Name

Chief Executive Officer

Title

5-2-23

Date

Attachment 6

NON-COLLUSIVE AFFIDAVIT

Before me, the undersigned authority ("Affiant"), personally appeared: William P. Byrne who, being first duly sworn, deposes and says that:

1. Affiant is the Chief Executive officer of Ajax Building Company, LLC, the Respondent that has submitted the attached reply;

2. Affiant is fully informed respecting the preparation and contents of the attached reply and of all pertinent circumstances respecting such reply;

3. Such reply is genuine and is not a collusive or sham reply;

4. Neither the said Respondent nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other respondent, firm, or person to submit a collusive or sham reply in connection with the work for which the attached reply has been submitted: or have in any manner, directly or indirectly sought by agreement or collusion, or communication or conference with any respondent, firm, or person to fix the price or prices in the attached reply or of any other respondent, or to fix any overhead, profit, or cost elements of the reply price or the reply price of any other respondent, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the reply work.

Signed, sealed, and delivered on MAY 2, 2023.

Signature

William P. Byrne

Printed Name

Chief Executive Officer

Title

SWORN ACKNOWLEDGMENT

STATE OF Florida
COUNTY OF Pinellas

Sworn to (or affirmed) and subscribed before me by means of ✓ physical presence or ____ online notarization, this 2nd day of May 2023, by William P. Byrne.

Karen B. Santiago

Notary Public

Personally Known ✓ OR Produced Identification ____
Type of Identification Produced ____

KAREN B. SANTIAGO
Commission # GG 327128
Expires June 6, 2023
Bonded Thru Troy Fain Insurance 800-385-7019

Attachment 7

CONFLICT OF INTEREST FORM

Florida Statutes Section 112.313 places limitations on public officers (including advisory board members) and employees' ability to contract with the City of North Port, Florida ("City") either directly or indirectly.

PART I. [*Select and complete all that apply*]:

_____ I am an employee, public officer, or advisory board member of the City.

Identify the position and/or board: _____

_____ I am the spouse or child of an employee, public officer, or advisory board member of the City.

Identify the name of the spouse or child: _____

_____ I am an employee, public officer or advisory board member of the City, or my spouse or child, is an officer, partner, director, or proprietor of Respondent/Contractor or has a material interest in Contractor. "Material interest" means direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity. For the purposes of Florida Statutes Section 112.313, indirect ownership does not include ownership by a spouse or minor child.

Identify the name of the person and the entity _____

_____ Bidder/Contractor employs or contracts with an employee, public officer, or advisory board member of the City.

Identify the name of the employee, public officer, or advisory board member _____

__X__ None of the Above

PART II: Will you request an advisory board member waiver?

_____I WILL request an advisory board member waiver under §112.313(12)

_____I WILL NOT request an advisory board member waiver under §112.313(12)

__X__N/A

The City will review any relationships which may be prohibited under the Florida Ethics Code and will disqualify any Contractor whose conflicts are not waived or exempt.

Attachment 7

Signature of Person Authorized to Bind the Contractor

William P. Byrne

Printed Name

Chief Executive Officer

Title

5-2-23

Date

Attachment 8

PUBLIC ENTITY CRIME INFORMATION

As provided by F.S. §287.133, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a Contract to provide any goods or services to a public entity, may not submit a bid on a Contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Contractor, supplier, Subcontractor, or Consultant under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

I, William P. Byrne, being an authorized representative of the Contractor, have read and understand the contents above.

I certify that the Contractor is not disqualified from replying to this solicitation/contracting because of Florida Statutes Section 287.133.

Telephone #: 813-792-3900 Fax #: 813-792-3938

Federal ID #: 59-0969709 Email: Bill.Byrne@ajaxbuilding.com

Signature of Contractor's Authorized Representative

William P. Byrne, CEO
Name and Title of Contractor's Authorized Representative

5-2-23
Date

SWORN ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF Pinellas

Sworn to (or affirmed) and subscribed before me by means of ✓ physical presence or ____ online notarization, this 2nd day of May 2023, by William P. Byrne.

Karen B. Santiago
Notary Public – State of Florida

Personally Known ✓ OR Produced Identification ____
Type of Identification Produced ____

KAREN B. SANTIAGO
Commission # GG 327128
Expires June 6, 2023
Bonded Thru Troy Fain Insurance 800-385-7019

Attachment 9
DRUG FREE WORKPLACE FORM

The undersigned, in accordance with Florida Statutes Section 287.087, hereby certifies that the Contractor, Ajax Building Company, LLC (Company Name):

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

Check one:

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

_____ As the person authorized to sign this statement, this firm **does not** comply fully with the above requirements.

Signature

William P. Byrne
Printed Name

Chief Executive Officer
Title

5-2-23
Date

Attachment 11
SCRUTINIZED COMPANY CERTIFICATION FORM

Contractor Name: Ajax Building Company, LLC
Authorized Representative Name and Title: William P. Byrne
Address: 109 Commerce Blvd City: Oldsmar State: FL ZIP: 34677
Phone Number: 813-792-3900 Email Address: Bill.Byrne@ajaxbuilding.com

A company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a Contract with the City of North Port for goods or services of any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such Contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes, section 215.4725, or is engaged in a boycott of Israel.

A company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a Contract with the City of North Port for goods or services of $1 million or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such Contract, the company is on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Florida Statutes, section 215.473, or with companies engaged in business operations in Cuba or Syria.

CHOOSE ONE OF THE FOLLOWING

____This Contract or Contract renewal is for goods or services of less than $1 million. As the person authorized to sign on behalf of the above-named company, and as required by Florida Statutes Section 287.135(5), I hereby certify that the above-named company is not participating in a boycott of Israel.

_X_ This bid, proposal, Contract or Contract renewal is for goods or services of $1 million or more. As the person authorized to sign on behalf of the above-named company, and as required by Florida Statutes Section 287.135(5), I hereby certify that the above-named company is not participating in a boycott of Israel, is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and it does not have business operations in Cuba or Syria.

I understand that pursuant to Florida Statutes, section 287.135, the submission of a false certification may result in the termination of the Contract if one is entered into, and may subject the above-named company to civil penalties, attorney's fees and costs.

Certified By: _____
Signature of Contractor's Authorized Representative

William P. Byrne
Name

Chief Executive Officer
Title

5-2-23
Date

Attachment 12

VENDOR'S CERTIFICATION FOR E-VERIFY SYSTEM

The undersigned Vendor/Consultant/Contractor (Vendor), after being duly sworn, states the following:

1. Vendor is a person or entity that has entered into or is attempting to enter into a contract with the City of North Port (City) to provide labor, supplies, or services to the City in exchange for salary, wages or other renumeration.

2. Vendor has registered with and will use the E-Verify System of the United States Department of Homeland Security to verify the employment eligibility of:

    a. All persons newly hired by the Vendor to perform employment duties within Florida during the term of the contract; and

    b. All persons, including sub-contractors, sub-vendors or sub-consultants, assigned by the Vendor to perform work pursuant to the contract with the City.

3. If the Vendor becomes the successful Contractor who enters into a contract with the City, then the Vendor will comply with the requirements of Section 448.095, Fla. Stat. "Employment Eligibility", as amended from time to time.

4. Vendor will obtain an affidavit from all subcontractors attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien as defined in 8 United States Code, Section 1324A(H)(3).

5. Vendor will maintain the original affidavit of all subcontractors for the duration of the contract.

6. Vendor affirms that failure to comply with the state law requirements can result in the City's termination of the contract and other penalties as provided by law.

7. Vendor understands that pursuant to Florida Statutes, section 448.095, the submission of a false certification may result in the termination of the contract if one is entered into, and may subject the Vendor named in this certification to civil penalties, attorney's fees and costs.

VENDOR: Ajax Building Company, LLC (Vendor's Company Name)

Certified By: _____
AUTHORIZED REPRESENTATIVE SIGNATURE

Print Name and Title: William P. Byrne, Chief Executive Officer

Date Certified: 2/22/2010

Attachment 15

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS PRIMARY COVERED TRANSACTIONS

This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000.

The Contractor certifies that, neither the firm nor any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of federal funds:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as defined in 49 CFR s29.110(a), by any federal department or agency;

(b) has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) is presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) has within a three-year period preceding this certification had one or more federal, state, or local government public transactions terminated for cause or default.

The Contractor certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this project by any federal agency unless authorized by the City of North Port.

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.

This certification is a material representation of fact relied upon by the City of North Port. 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 the City of North Port, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer.

The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Ajax Building Company, LLC	59-0969709
Company Name (Contractor)	Tax ID Number
William P,. Byrne	
Authorized Representative Name	Authorized Representative Signature
Federal Issued Tax Identification Number	CAGE Code issued through www.sam.gov

Attachment 15

(If Social Security number DO NOT enter)

DATE: 5-2-23

Attachment 16

CONTRACT CHANGES

A. The parties may make changes to the contract work, including additions or deletions, provided that such changes are within the general scope of the contract work. Any change affecting the contract price must be in writing and signed by both parties. The Contractor is not entitled to any increase in price or extension of time unless the contract is changed in accordance with this section.

B. Either party may submit to the other a change proposal, which must identify any proposed changes in contract price or time, explain why the change is believed necessary, and cite to any applicable provision of the contract. Within a reasonable time, the party receiving the proposal shall respond in writing to the other party. If the parties agree to the change, they will execute an amendment to the contract changing its terms.

C. Without invalidating the contract, the City may order additions, deletions, or revisions in the work, provided that such changes are within the general scope of the contract work. Such changes may be accomplished by a contract amendment, if the City Commission and Contractor have agreed as to the effect, if any, of the changes on contract price. If the parties cannot agree, the Contractor shall proceed with the work, or, in the case of a deletion, cease activities with respect to the deleted work, subject to the Contractor's right to claim for additional compensation or time. Any such claim must be made in writing within 14 days. Additional compensation will be limited to Contractor's actual cost of the work, plus reasonable profit and overhead. Nothing in this section shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the contract or governing laws and regulations.

Attachment 17

SANCTIONS AND PENALTIES

In the event of a breach of the terms of this Contract, the Contractor and its subcontractors will be subject to sanctions and penalties as may be imposed and remedies invoked as provided by rule, regulation, or order of the local, state, and federal agency, and as otherwise provided by law and other terms of this Contract.

Attachment 18

TERMINATION FOR CONVENIENCE

The City reserves the right, in its best interest as determined by the City, to cancel this Contract for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. In the event this Contract is terminated for convenience, Contractor shall be paid for any services performed to the City's satisfaction pursuant to the Contract through the termination date specified in the written notice of termination. The Contractor acknowledges and agrees that Contractor has received good, valuable, and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by the Contractor, for City's right to terminate this Contract for convenience. The Contractor will not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.