

# CONSTRUCTION MANAGER AT RISK AGREEMENT BETWEEN POLK COUNTY AND CONSTRUCTION MANAGER

THIS CONSTRUCTION MANAGER AT RISK AGREEMENT ("Agreement") is entered into as of the Effective Date (hereinafter defined) by and between Polk County, a political subdivision of the State of Florida, 330 W. Church Street, Bartow, Florida 33830 (hereinafter designated as the "County") and Marcobay Construction, Inc., a Florida Profit Corporation, 3810 Drane Field Road – Suite 16, Lakeland, FL 33811, whose Federal Identification Number is: 59-1509590 (hereinafter designated as the "Construction Manager").

## WITNESSETH:

**WHEREAS**, the County requires certain Construction Manager at Risk services to be performed in Polk County; and,

**WHEREAS**, the County has solicited for these professional services via RFP 25-597, an advertised request for proposals, and has received numerous responsive proposals thereto; and

**WHEREAS**, after review and consideration of all responsive proposals, the County intends to retain the Construction Manager identified above to provide such professional services under this Agreement; and

**WHEREAS**, the Construction Manager remains agreeable to providing the County the professional services and represents that it is capable and prepared to do so.

**NOW, THEREFORE**, in consideration of the promises contained herein, the County and the Construction Manager (collectively, the "Parties") hereby agree, as follows:

## ARTICLE 1

### THE CONSTRUCTION TEAM, EXTENT OF AGREEMENT AND DEFINITIONS

The Construction Manager accepts the relationship of trust and confidence established between him and the County by this Agreement. The Construction Manager covenants with the County to furnish his best skill and judgment in furthering the interest of the County. The Construction Manager agrees to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Services in the best way and the most expeditious and economical manner, consistent with the interests of the County, and the terms and conditions of the Contract Documents. Further, the Construction Manager acknowledges that (i) he has represented to the County that it has specific expertise in the planning, reviewing, management and construction of projects of similar size, cost and complexity and (ii) that such representation is a material inducement to the County to enter into this Agreement.

#### 1.1 The Construction Team:

The Construction Manager, the County and the Architect/Engineer, collectively called the "Construction Team", shall work jointly during the Pre-Construction Phase and the Construction Phase. The Architect/Engineer and the Construction Manager shall communicate through the County's Representative, except as may otherwise be provided in this Agreement. The Construction Manager shall copy the County's Representative on all correspondence sent to or received from the Architect/Engineer or any of its consultants of which the County's Representative was not copied. The specific representatives of the Construction Team shall be identified further in the Pre-Construction Addendum and the GMP Addendum.

## 1.2 Extent of Agreement:

This Agreement, between the County and the Construction Manager, supersedes any prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions/revisions of the Construction Documents and may be amended only by Change Order or through a duly executed amendment as authorized herein.

## 1.3 Definitions:

- 1.3.1 Project – the design and construction of the New Agricultural Center Complex, as further described in RFP #25-597, including all attachments and addenda, and this Agreement. Pre-Construction Services of the Project shall include coordination of all architectural, landscaping and engineering design and other pre-construction services, including, without limitation, the preparation of a proposed GMP, necessary to provide a complete and usable facility in accordance with this Agreement. Construction Phase of the Project shall include the construction of the facility, along with project management and coordination and quality assurance services necessary to complete the Project to the County's satisfaction.
- 1.3.2 Services – shall include: (1) all professional services described in the County's Request for Proposals RFP #25-597, including all attachments and addenda; (2) all services described in the Construction Manager's response thereto (collectively, "RFP 25-597" is attached hereto as a composite **Exhibit "A"** and made a part of this Agreement); (3) all services described in Article 2 herein (but as may be specifically excluded by the County in the Pre-Construction Addendum); and (4) all Pre-Construction Phase Services and Construction Phase Services (the Construction Phase Services may also be referred to herein as the "Work") as further set forth and described herein or in either the Pre-Construction Addendum, the GMP Addendum, or both.
- 1.3.3 Pre-Construction Services Addendum is attached hereto and incorporated herein as **Exhibit "B"**.
- 1.3.4 GMP Addendum is attached hereto and incorporated herein as **Exhibit "C"** and shall be completed and executed by the County and the Construction Manager following the completion of Pre-Construction Phase Services and determination of a mutually-acceptable Guaranteed Maximum Price ("GMP") and related terms.
- 1.3.5 Architect/Engineer – The Lunz Group.
- 1.3.6 Contract Documents - The Contract Documents consist of this Agreement, the Exhibits hereto, and any duly executed amendments and/or addendums, including, without limitation, the Pre-Construction Addendum and the GMP Addendum, in addition to all plans and specifications for the construction of the Project ("Construction Documents") that have been completed by the Architect/Engineer and approved in writing by the County's Representative.
- 1.3.7 Punch List – A final list of items of Work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to Final Completion.
- 1.3.8 Schedule of Values - The schedule to be used as a basis for progress payments to be made to the Construction Manager by the County during performance of the Work, based on the then current percentage of progress of construction of the Work, subject to the review of the Architect/Engineer and the County's Representative.
- 1.3.9 Subcontractor – A subcontractor is any person or entity performing, furnishing, supplying or providing any portion of the Work pursuant to a contract with the Construction Manager. Construction Manager shall be solely responsible for and have control over the subcontractors.

- 1.3.10 Substantial Completion Date – The date, certified by the Architect/Engineer, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and as further delineated in Article 2, Section 2.5.1 so that the County can reasonably occupy or utilize the Project, or a designated portion thereof, for its intended use.
- 1.3.11 General Conditions – Those items that are not specific to any trade and are required for the construction of the Project.
- 1.3.12 County's Construction Budget: The County's Construction Budget shall be set forth in the completed GMP Addendum and shall include an estimated total of all three segments of the budget, including all Construction Manager Fees, Costs of the Work and the County's Allowance, as defined in Article 6. This acknowledgment of the County's Construction Budget is not to be construed as the Construction Manager's Guaranteed Maximum Price ("GMP").
- 1.3.13 *Intentionally omitted.*
- 1.3.14 Term –The "Term" of this Agreement shall commence on the Effective Date and shall continue thereafter through the date of completion by Construction Manager of all its contractual obligations (with the exception of the Warranty period as set forth in Section 2.6.3 and any other provisions contained herein which are specifically stated to survive expiration or earlier termination of this Agreement), and the County has paid the final balance due Construction Manager, including any retainage, as noted in the Certificate for Final Completion.
- 1.3.15 Allowance – Funds and time appropriated by the County for additional work which is not included in the contract document yet may be necessary for the completion of the Work. Any unused allowance funds shall be returned to the County by Change Order at the completion of the Project.
- 1.3.16 Contingency – Those areas of work that are not at 100% design completion, at the time of GMP, for which additional monies will be allowed. A contingency dollar amount will be shown as a separate amount at the appropriate line item within the GMP and labeled as a contingency for that item of work. Any unused contingency funds shall be reassigned to the County's Buyout Allowance, as defined in Section 6.1.5.
- 1.3.17 Effective Date – shall be the date this Agreement is executed by the Chair, Board of County Commissioners.
- 1.3.18 The County's Representative(s) may be any or all of the following: County Manager, Deputy County Manager, and/or the Facilities Management Division Director

## **ARTICLE 2**

### **CONSTRUCTION MANAGER'S SERVICES**

The County does hereby retain the Construction Manager to furnish, provide and perform the Services (as defined in Section 1.3.2), as those Services may be further specifically designated and authorized by the County in writing, including, without limitation, those services as set forth in the Scope of Services of the Pre-Construction Services Addendum and in the GMP Addendum.

The Services shall include, without limitation, those described or specified in this Article 2. Such services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. Additionally, some of the services described in this Article 2 may be specifically excluded by the County, as set forth in the completed Pre-Construction Services Addendum.

2.1 Project Management Information System (PMIS):

2.1.1 General:

- 2.1.1.1 Commencing immediately upon issuance by the County of a Notice To Proceed, the Construction Manager shall implement and shall utilize throughout the life of the particular Project all subsystems of the Project Management Information System hereinafter referred to as PMIS.
- 2.1.1.2 The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the Work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the County's Representative and the Architect/Engineer monthly.
- 2.1.1.3 If requested by the County's Representative, the Construction Manager shall conduct a comprehensive workshop for participants designated by the County's Representative and additional seminars as required, to provide instruction. This workshop and the seminars shall facilitate each participant's and the County's Representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect/Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the County's Representative and the Architect/Engineer, procedures for accomplishing the management control aspect of the Project.
- 2.1.1.4 The PMIS shall be described in terms of the following major subsystems:
  - 2.1.1.4.1 Narrative Reporting, on a monthly basis, and
  - 2.1.1.4.2 Schedule Control, on a monthly basis, and
  - 2.1.1.4.3 Cost Control, and estimating, and
  - 2.1.1.4.4 Project Accounting, and
  - 2.1.1.4.5 Accounting and Payment, on a monthly basis, and
  - 2.1.1.4.6 Action Reports.

2.1.2 Narrative Reporting Subsystem:

- 2.1.2.1 The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8.5" X 11" format, unless directed otherwise by the County's Representative.
- 2.1.2.2 The Narrative Reporting Subsystem shall include the following reports:
  - 2.1.2.2.1 A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including all violations and deficiencies found by the applicable permitting authorities.
  - 2.1.2.2.2 A Monthly Cost Narrative describing the current cost status of the Project.
  - 2.1.2.2.3 A Monthly Scheduling Narrative summarizing the current status of the Master Project Schedule. This report shall include an analysis of the various Project schedules, a description of the critical path, tracking of approved original baseline schedule versus the actual progress of the Work and other analyses as necessary.
  - 2.1.2.2.4 A Monthly Accounting Narrative describing the current cost and payment status of the Project. This report shall relate current encumbrances and expenditures to the budget allocations.



2.1.2.2.5A Monthly Progress Report, during the Construction Phase, summarizing the work of the various subcontractors and consultants. This report shall include information from the weekly job site meetings, as applicable, such as General Conditions, long lead supplies, current deliveries, safety and labor relations programs, permits, construction problems and recommendations, and plans for the succeeding month.

2.1.2.2.6A Daily Construction Diary during the Construction Phase describing events and conditions on the site.

2.1.2.3 The reports outlined in subsection 2.1.2.2 shall be submitted monthly during the Construction Phase and shall be current through the end of the preceding month. Copies shall be transmitted to the County's Representative and the Architect/Engineer and others as designated by the County's Representative with the monthly pay requisition. Additional copies of the Monthly Executive Summary, as outlined in subsection 2.1.2.2.1, shall be distributed monthly, as directed by the County's Representative. The Daily Construction Diary, as outlined in subsection 2.1.2.2.6, shall be maintained at the Project Site Office Facility and be made available to the County's Representative and Architect/Engineer. An electronic PDF copy of the complete Daily Construction Diary shall be submitted to the County's Representative at the conclusion of the Project.

### 2.1.3 Scheduled Control Subsystem:

2.1.3.1 Master Project Schedule: Within 30 days following issuance of the Notice To Proceed, the Construction Manager shall submit, to the County's Representative for approval, a Master Project Schedule covering the Pre-Construction Phase and Construction Phase. The Master Project Schedule shall serve as the framework for the subsequent development of all detailed schedules. The Master Project Schedule shall be produced and updated monthly throughout the Project. No revisions, activity additions, activity deletions, or logic changes to the Master Project Schedule or any other schedule previously approved by the County, shall be made without the County's approval. Minor or immaterial deviations that do not affect key milestone dates may be amended if approved by the County's Representative.

2.1.3.2 Construction Schedule: With the submission of the GMP Proposal, the Construction Manager shall submit to the County's Representative, for approval, a Critical Path Construction Schedule (hereinafter "Construction Schedule") in sufficient detail to graphically depict the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Work, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The Construction Schedule shall be based on a "Network Analysis System" and shall be the latest version of Microsoft Schedule, Primavera P3, or equivalent, as determined by the County's Representative. The County's Representative shall determine whether the Construction Schedule developed and submitted by the Construction Manager meets the requirements stated above and such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a Construction Schedule as aforesaid shall be sufficient grounds for the County to find the Construction Manager in substantial default and certify that sufficient cause exists to terminate the Agreement or to withhold any payment.

2.1.3.3 Updated Construction Schedule: Following development and submittal of the Construction Schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Work, or at such earlier intervals as circumstances may require, update the Construction Schedule. The updated Construction Schedule will show the actual progress of the Work performed compared to the original baseline schedule, approved as set forth in Section 2.1.3.2, and all updates thereto as reflected in the updated Construction Schedule last submitted prior to submittal of each such

monthly update. Each such update to the Construction Schedule shall be submitted to the County's Representative. Failure of the Construction Manager to update and submit the Construction Schedule as aforesaid shall be sufficient grounds for the County to find the Construction Manager in substantial default, and certify that sufficient cause exists to terminate the Agreement or to withhold payment to the Construction Manager, until a schedule or schedule update acceptable to the County's Representative is submitted.

2.1.3.4 When required by the County's Representative, the Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:

2.1.3.4.1 Subcontractor Construction Schedules (Sub-networks) - Upon the award of each sub-contract, the Construction Manager shall jointly, with the subcontractor, develop a schedule which is more detailed than the Construction Schedule, taking into account the work schedule of the other subcontractors. The Construction Manager shall ensure each Subcontractor's Construction Schedule is incorporated into the Construction Manager's Construction Schedule, ensuring the necessary information is included to allow for construction planning and monitoring the performance of each subcontractor.

2.1.3.4.2 Final Completion Schedule - The Construction Manager shall jointly develop with the Architect/Engineer and the County's Representative, a detailed plan, inclusive of Punch Lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Final Completion. The Final Completion Schedule shall be produced and updated monthly and may be part of the Construction Schedule.

2.1.3.4.3 Utility Relocation Schedule - The Construction Manager shall jointly develop with the Architect/Engineer and the County's Representative a detailed plan, for any and all utility relocations required for successful completion of the Work. The Utility Relocation Schedule shall be produced and updated monthly, and may be part of the Construction Schedule.

2.1.3.4.4 Recovery Schedule - If any portion of the Master Project Schedule or any current updates fail to reflect the actual plan or method of operation of the Work, or a contractual milestone date is more than 15 days behind, the County's Representative may require that a Recovery Schedule for completion of the remaining work be submitted. The Recovery Schedule must be submitted within 7 calendar days of the request by the County's Representative. The Recovery Schedule shall describe in detail the Construction Manager's plan to complete the remaining work by the required Agreement milestone date. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Agreement milestone dates.

2.1.3.4.5 Change Orders - When a Change Order is proposed, the County's Representative may require the Construction Manager to identify all logic changes as a result of the Change Order. The Construction Manager shall include, as part of each Change Order proposal, a sketch showing all schedule logic revisions, duration changes, and the relationships to other activities in the Master Project Schedule. This sketch shall be known as the fragnet for the change. Upon acceptance of the fragnet, the Construction Manager will revise the Master Project Schedule. The logic changes required by the Change Order will be considered incidental to the Construction Manager's work. No separate payment will be made for the work required to identify all logic changes that result from the Change Order.

2.1.4 Budget Control Subsystem - The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the Project requirements, needs, materials, equipment and site elements, so that the Work will be completed at a cost which, together

with all other Costs of the Work, will not exceed the County's Project Budget. Requirements of this subsystem may include the following submissions:

- 2.1.4.1 Estimate at the completion of schematic design; and
- 2.1.4.2 Estimate at the completion of 100% design development plans; and
- 2.1.4.3 Estimate at the submission of the GMP Proposal.

- 2.1.5 Project Accounting Subsystem - The operation of this subsystem shall enable the Construction Team to plan effectively and to enable the County's Representative to monitor and control the funds available for the Project, cash flow, costs, Change Orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, amounts payable, and to plan effectively. This subsystem will be produced and updated monthly and includes the following reports, which together will serve as a basic accounting tool and an audit trail. This report may be further defined by the County's Representative.

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

2.1.5.2 Project Accounting Structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the Change Order history including Change Order numbers, description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending Change Orders.

2.1.5.3 A Cash Flow Diagram - showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments and may be requested at earlier or more frequent intervals by the County's Representative.

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

- 2.2 Project Manual: Upon the execution of this Agreement, the Construction Manager shall develop a draft comprehensive Project Manual describing the services set forth in this Agreement. This shall provide a plan for the control, direction, coordination and evaluation of Work performed throughout the Project; the Project organization including identification of key personnel, responsibilities of Construction Manager, the County's Representative and Architect/Engineer; work flow diagrams; and strategy for bidding the Work. The Project Manual shall be completed and submitted to the Architect/Engineer and the County's Representative for their review of the format and content, and to the County's Representative for approval as a condition precedent to the first progress payment by County to Construction Manager for services provided in the Pre-Construction Phase. The Project Manual shall be updated as necessary, with the approval of County's Representative throughout the Pre-Construction and Construction Phases. A copy of the Project Manual, and any updates, shall be submitted separately to the County's Representative and Architect/Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the County's Representative and the Architect/Engineer. The Project Manual is merely an amplification and clarification of this Agreement. Any conflicts between the Project Manual and this Agreement shall be governed by the latter. The Project Manual shall describe in detail the procedures for executing the Work and the organizations participating. The Project Manual shall include as a minimum the following sections:

- 2.2.1 Project Definition - The known characteristics of the Project or sub-projects shall be described in general terms which will provide the participants a basic understanding of the Project or sub-projects.

- 2.2.2 Project Goals - The schedule, budget, physical, technical and other objectives for the Project.

- 2.2.3 Project Strategy - A narrative description of the Project delivery methods shall be utilized to accomplish the Project goals.
- 2.2.4 Project Work Plan - A matrix display of the program of Work to be performed by the Construction Manager, the Architect/Engineer and the County's Representative during each phase of the Project.
- 2.2.5 Project Organization - A summary organization chart showing the interrelationships between the County, the Construction Manager, the Architect/Engineer, and other supporting firms, organizations and permitting review agencies. Detailed charts, one each for the Construction Manager, the Architect/Engineer, and the County's Representative, showing organizational elements participating in the Project shall be included.
- 2.2.6 Responsibility Performance Chart - A detailed matrix showing the specific responsibilities of the County, the Architect/Engineer, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the Project. The Construction Manager shall develop a similar chart for the personnel within his own organization who are assigned to the Project, and also for the personnel of the County and the Architect/Engineer from data supplied by each.
- 2.2.7 Flow Diagrams - These charts shall display the flow of information and the decision process for the review and approval of shop drawings, submittals, and Change Orders.
- 2.2.8 Written Procedures - The Construction Manager will provide written procedures for communications and coordination required between Construction Team members throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.
- 2.2.9 Emergency Contact List: A complete list of the names, company affiliation and emergency contact phone numbers (both day and night) for all key Project personnel from County, Construction Manager and Architect/Engineer, as well as from all subcontractors, sub-consultants and suppliers of any of them. This list shall be continuously updated by the Construction Manager throughout the Project duration, with Construction Manager distributing a copy of all updates to County's Representative and Architect/Engineer.
- 2.3 Pre-Construction Phase Services: The services to be provided under this Section 2.3 constitute the Pre-Construction Phase Services. The parties acknowledge the Construction Phase may commence before the Pre-Construction Phase is completed, and to a certain extent both phases may proceed concurrently.
  - 2.3.1 Preliminary Evaluation - The Construction Manager shall provide a preliminary evaluation of the Project and the County's Project Budget requirements, each in terms of the other.
  - 2.3.2 Consultation - The Construction Manager will jointly schedule and attend regular meetings with the County's Representative and Architect/Engineer. The Construction Manager shall make recommendations with respect to the selection of systems and materials, and cost – reducing alternatives, including assistance to the Architect/Engineer and County's Representative, in evaluating alternative comparisons versus long term cost effects. The evaluation shall address the benefits of the speed of construction and early completion of the Project. The Construction Manager shall furnish pertinent information as to the availability of materials and labor that will be required, in addition to items such as the identification, if necessary, of right-of-way to be acquired, outstanding permits and related issues and the status of utility relocations.
  - 2.3.3 Right of Way Acquisition – When requested, Construction Manager shall assist the County's Representative, in conjunction with the County Attorney's Office, with right of way acquisition, including but not limited to, obtaining appraisals, and assisting with the negotiation of purchase agreements. Construction Manager shall coordinate and develop in the Construction Documents all applicable conditions negotiated through the right-of-way acquisition process, including but not

limited to such items as driveway transitions and modifications, fence relocations and other related items.

- 2.3.4 Phased Construction - Without assuming any design responsibilities, the Construction Manager shall review the design with the Architect/Engineer and may make recommendations to the County's Representative with respect to dividing the Work in such manner as will permit the Construction Manager to take bids and award separate construction sub-contracts on the current schedule, while the design is being completed. He shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, maintenance of traffic and utility relocation issues, status of right of way acquisition and community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the County's Representative.
- 2.3.5 Review Reports - Within 30 days after receiving the Construction Documents for each phase of the Project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Article 2, Section 2.3. Promptly after completion of the review, he shall submit to the Construction Team, with copies to the Architect/Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as he may deem appropriate, and all actions taken by the Architect/Engineer with respect to same, any comments he may deem to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2, Section 2.3. Construction Manager shall not assume in any way the responsibilities of the Architect/Engineer, in particular, the responsibility of assuring that the Construction Documents are in accordance with applicable laws, statutes, ordinances, Building Codes, Rules, and Regulations. However, if the Construction Manager recognizes that portions of the Construction Documents are at variance therewith, the Construction Manager shall include notice of same in the written report. THE CONSTRUCTION MANAGER SHALL WARRANT, TO THE BEST OF CONSTRUCTION MANAGER'S KNOWLEDGE, WITHOUT ASSUMING ANY ENGINEERING RESPONSIBILITY, THAT THE CONSTRUCTION DOCUMENTS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE CONSTRUCTION DOCUMENTS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.
- 2.3.6 Long Lead Procurements - The Construction Manager shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the Construction Manager shall notify the subcontractors, the County's Representative and the Architect/Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise County's Representative and Architect/Engineer of any problems or prospective delay in delivery. The Construction Manager may recommend to the County's Representative a schedule for procurement of the long-lead time items, which will constitute part of the Work as required to meet the Master Project Schedule. If such long-lead time items are procured by the County, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the County's acceptance of the Construction Manager's GMP proposal, all contracts for such items may be assigned by the County to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall assist in expediting the delivery of long-lead time items.
- 2.3.7 Project Site Office Facilities - The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Team to perform their respective duties in the management, inspection, and supervision of construction. Tangible personal property, otherwise referred to as Project Site Office Facilities, include but are not limited to such things as trailers, toilets, computers

and any other equipment necessary to carry on the Project. The method of acquiring such Project Site Office Facilities, which are planned to become the property of the County at the conclusion of the Project, shall be evaluated based on cost over the life of the Project. Owning versus leasing shall be considered by the Construction Manager obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing, and then analyzing which is the most cost effective over the useful life of the item. The Construction Manager shall present his evaluation with recommendation to the County's Representative for approval. When the Construction Manager wishes to supply Project Site Office Facilities from his own equipment pool, he shall first evaluate buy versus lease as discussed previously herein. If leasing is found to be the least expensive approach, then he may lease such Project Site Office Facilities from his own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained. For all such facilities purchased, which are to become the property of the County at the conclusion of the Project, the Construction Manager shall maintain care and custody responsibilities of such facilities until the Project conclusion. At the conclusion of the Project, the Construction Manager shall provide the County's Representative with a complete inventory of equipment that has been purchased for the County. The inventory shall describe the equipment and identify the purchase price, serial number, model number, current location, and condition. Where said equipment has a title, said title shall be properly transferred to the County or to his designee. The Construction Manager is responsible for proper care and maintenance of all equipment while in his control. At the time of transfer to the County, the County may refuse acceptance of the equipment if the County determines in its sole discretion that the equipment has not been properly cared for by the Construction Manager. In such event, the Construction Manager shall reimburse County for the cost of such item.

2.3.8 Weather Protection - The Construction Manager shall ascertain what temporary enclosures, if any, of work areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work in periods when extreme weather conditions are likely to be experienced. He shall submit to the Construction Team his recommendations as to needed requirements of this nature and as to the contract, or contracts, in which they should be included. The Construction Manager is totally responsible for all weather protection necessary to insure that all new construction is adequately protected from the normal inclement elements.

2.3.9 Market Analysis and Stimulation of Bidder Interest - The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project. The Construction Manager shall submit to the County's Representative a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the County's Representative and the Architect/Engineer a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the Polk County market place and identify and encourage bidding competition. The Construction Manager shall carry out an active program of stimulating interest of qualified contractors in bidding on the Work and of familiarizing those bidders with the requirements of this Project.

2.4 Construction Phase - After the Construction Documents have been sufficiently completed by Architect/Engineer and approved by County's Representative for all the Work (or such portions thereof as may be designated by County in writing) and County and Construction Manager have agreed in writing upon the GMP to be paid to Construction Manager and the Contract Time for the Work (or designated portions thereof) as hereafter provided, Construction Manager shall fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all the terms and conditions of the Contract Documents.

2.4.1 Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent, full time, staff at the Project Site, authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the Work and progress of the subcontractors, and he shall provide no less than those personnel during the respective phases of construction that are set forth in Schedule 1 of the GMP Addendum. He shall not change any of

those persons named in said Schedule unless mutually agreed to by the County's Representative and Construction Manager. In such case, the County's Representative shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.

- 2.4.2 Lines of Authority - The Construction Manager shall establish and maintain lines of authority for his personnel, and shall provide this definition to the County's Representative and all other affected parties, such as the code inspectors of the permitting agencies, the subcontractors and the Architect/Engineer, to provide general direction of the Work and progress of the various phases and subcontractors. The County's Representative and Architect/Engineer may attend meetings between the Construction Manager and his subcontractors; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontracts.

- 2.4.3 Schedule and Project Manual Provisions - The Construction Manager shall provide subcontractors and the County, its representatives and the Architect/Engineer with copies of the Project Manual developed and updated as required by Article 2, expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to subcontractors and suppliers. He shall also continue to provide current scheduling information, direction and coordination regarding milestones, and beginning and finishing dates. He is also responsible for performance and the relationships of his work to the work of his subcontractors and suppliers, to enable them to perform their respective tasks, so that the development of construction progresses in a smooth and efficient manner in conformance with the Master Project Schedule.

- 2.4.4 Solicitation of Bids Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare invitations for bids, or requests for proposals when applicable, for all procurement of long lead items, materials and services, for Subcontractor contracts and, if directed by the County, for site utilities. Such invitations for bids shall be prepared in accordance with the following guidelines:

2.4.4.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from subcontractors, vendors, consultants and from suppliers of materials or equipment fabricated to a special design for the Work. The Construction Manager shall strive to receive at least three competitive bids per trade package. Should the nature of the trade package prohibit three competitive bids, the Construction Manager shall notify the County's Representative in writing as to the reason and offer suggestions, if any, to create trade interest.

2.4.4.2 The Construction Manager shall be responsible for coordinating with the Architect/Engineer and preparing all information that is the responsibility of the Construction Manager for bidding of the separate bid packages.

2.4.4.3 The Construction Manager and the County's Representative shall mutually agree when and if to conduct a pre-bid conference with prospective bidders and the Architect/Engineer. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the County's Representative and the Architect/Engineer and, upon receiving clarification or correction in writing, shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

- 2.4.5 Subcontracts Subject to Article 6 and, in accordance with Article 2, Section 2.4.4, the Construction Manager shall award subcontracts to the qualified low bidder after the Construction Manager and the County have reviewed each proposal and are satisfied that the subcontractor/supplier is qualified to perform the work. Construction Manager shall make available to each proposed subcontractor, prior to the execution of the subcontract, complete copies of the Contract Documents to which the subcontractor will be bound by this Section 2.4.5 and identify to the subcontractor any terms and

conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to its sub-subcontractors.

- 2.4.5.1 All subcontracts shall: (1) require each subcontractor to be bound to Construction Manager to the same extent Construction Manager is bound to County by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor, (2) provide for the assignment of the subcontracts from Construction Manager to County at the election of County, upon termination of Construction Manager, (3) provide that County will be an additional indemnified party of the subcontract, (4) provide that County will be an additional insured on all insurance policies required to be provided by the subcontractor, except workman's compensation, (5) assign all warranties directly to County, and (6) identify County as an intended third-party beneficiary of the subcontract.
- 2.4.5.2 Unless otherwise expressly agreed to by County in writing, all subcontracts shall provide: **LIMITATION OF REMEDIES – NO DAMAGES FOR DELAY** The subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the County or Architect/Engineer or attributable to the County or Architect/Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time and shall in no way involve any monetary claim. Each subcontract shall require that any claims by the subcontractor for delay must be submitted to the Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the County, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.
- 2.4.5.3 Subcontractual Relations - The Construction Manager shall require each Subcontractor to assume all the obligations and responsibilities which the Construction Manager owes the County, under the agreement, by the parties to the extent of the work to be performed by the subcontractor. Said agreements shall be made in writing and shall preserve and protect the rights of the County and Architect/Engineer under the Contract Documents, with respect to the Work to be performed by the subcontractor, so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each subcontractor to enter into similar agreements with its sub-subcontractor.
- 2.4.5.4 Insurance requirements for subcontractors shall be no more stringent than those requirements imposed on the Construction Manager by the County. The Construction Manager shall be responsible to the County for the acts and omissions of his employees, agents, subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager.
- 2.4.5.5 If bids are not received for a portion of the Work at or below the applicable line item amount in the GMP Addendum, the Construction Manager reserves the right to perform that portion of the Work, or negotiate for its performance for the specified line item lump sum amount or less.
- 2.4.6 A Public Construction Bond in the total amount of the GMP, along with all insurance certificates will be provided by the Construction Manager after approval of the GMP by the Board of County Commissioners, in the form attached hereto and incorporated herein as **Exhibit "M"**. No work shall be performed until these documents are provided and the certificates are current.
  - 2.4.6.1 The Bond shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents.
  - 2.4.6.2 All Bonds shall be in the form prescribed by the Contract Documents except as provided



otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570, as amended by the audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department and A.M. Best rated A VIII or better.

2.4.6.3 If the surety on any Bond furnished by the Construction Manager is declared bankrupt, becomes insolvent, its right to do business is terminated in any state or it ceases to meet the requirements of Section 2.4.6.2, the Construction Manager shall within ten (10) days thereafter substitute another Bond and surety, both of which must be acceptable to the County.

2.4.6.4 All Bonds and insurance required by the Contract Documents to be purchased and maintained by the Construction Manager shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Florida to issue bonds or insurance policies for the limits and coverage so required. All bonds signed by an agent must be accompanied by a certified copy of authority to act.

2.4.7 Quality Control - The Construction Manager shall develop and maintain a written program, acceptable to the County's Representative and Architect/Engineer, to assure quality control of the construction. He shall supervise the work of all subcontractors, providing instructions to each when their work does not conform to the requirements of the Construction Documents, and he shall continue to exert his influence and control over each subcontractor to ensure that corrections are made in a timely manner, so as to not affect the efficient progress of the Work. Should disagreement occur between the Construction Manager and Architect/Engineer over acceptability of Work and conformance with the requirements of the Construction Documents, the County's Representative shall be the final judge of performance and acceptability, subject to the dispute provisions of this Agreement.

2.4.8 Submittals and Substitutions- Construction Manager shall carefully examine the Contract Documents for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Construction Manager shall submit all such materials in such form and manner as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof. The Construction Manager shall also carefully review and certify for accuracy and completeness all shop drawings and other submittals and then forward the same to the Architect/Engineer for review and action. Within 14 days, the Architect/Engineer will transmit them back to the Construction Manager, who will then issue the submittals to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote the expeditious handling of shop drawings and all other submittals. The Construction Manager shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of it by the subcontractors. The Construction Manager shall advise the Architect/Engineer in writing which submittals or requests for clarification have the greatest urgency; the purpose being to enable the Architect/Engineer to prioritize requests coming from the Construction Manager. The Construction Manager shall advise the County's Representative and Architect/Engineer in writing when timely response is not occurring on any of the above.

2.4.8.1 If Construction Manager wishes to furnish or use a substitute item of material or equipment, Construction Manager shall make application to Architect/Engineer for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and at least of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Construction Manager's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with County for the Project) to adapt the design to the proposed substitute, and whether or not incorporation or use by the substitute

in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement services shall be indicated. The application also shall contain an itemized estimate of all costs or savings that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Architect/Engineer in evaluating the proposed substitute. Architect/Engineer may require Construction Manager to furnish, at Construction Manager's expense, additional data about the proposed substitute.

- 2.4.8.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Construction Manager may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to Architect/Engineer, if Construction Manager submits sufficient information to allow Architect/Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by Architect/Engineer shall be the same as those provided herein for substitute materials and equipment.
- 2.4.8.3 Architect/Engineer shall be allowed a reasonable time within which to evaluate each proposed substitute. Architect/Engineer and County's Representative shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without County's and Architect/Engineer's prior written acceptance which shall be evidenced by either a Change Order or an approved submittal. County may require Construction Manager to furnish, at Construction Manager's expense, a special performance guarantee or other surety with respect to any substitute. The cost of such guarantee may be reimbursable from the County's Owner Allowance or Buyout Allowance funds, provided that this cost is presented with the proposed substitute. If County rejects the proposed substitute, at County's direction, County may require Construction Manager to reimburse County for the charges of Engineer and Engineer's consultants for evaluating the proposed substitute.
- 2.4.9 Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the County and the County's Representative, including the Architect/Engineer.
- 2.4.10 Permits - The Construction Manager shall secure and pay for all permits and/or licenses which are customarily secured by a General Contractor. If Construction Manager performs any Work without obtaining, or contrary to, such permits or licenses, Construction Manager shall bear all costs arising therefrom. Cost for all re-inspections of Work found defective and subsequently repaired, shall be borne by the Construction Manager, unless such cost is not a result of negligence on the part of the Construction Manager.
- 2.4.11 Project Administration - The Construction Manager shall provide Project Administrative functions during construction to assure proper documentation, including, but not limited to, such things as the following:
  - 2.4.11.1 Job Meetings - Hold weekly progress and coordination meetings, or more or less frequently, if required, to provide for the timely completion of the Work. In addition, a regular monthly Project status meeting will be held between the Architect/Engineer, County's Representative and Construction Manager. The meetings shall serve as a tool for planning of work and enforcing schedules and for establishing procedures and responsibilities.
  - 2.4.11.2 Shop Drawing Submittals/Approvals - Check shop drawings and implement procedures to be approved by County's Representative for submittal and transmittal to the

Architect/Engineer and County's Representative of such drawings for action, and closely monitor their submittal and approval process.

- 2.4.11.3 Material and Equipment Expediting – Closely monitor material and equipment deliveries, follow-up procedures on supplier commitments of all subcontractors, and maintain a material and equipment expediting log.
- 2.4.11.4 Payments to subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.
- 2.4.11.5 Document Interpretation (RFI) - Refer all questions for interpretation of the Construction Documents to the Architect/Engineer with a copy to the County's Representative.
- 2.4.11.6 Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the County's Representative and the Architect/Engineer including information on the subcontractors' work, and the percentage of completion. Keep a daily log available to the County, the Engineer and the permitting authority's inspectors.
- 2.4.11.7 Subcontractors' Progress - Prepare periodic punch lists for the subcontractors' work, including unsatisfactory or incomplete items and schedules for their completion.
- 2.4.11.8 Start-Up - With the County's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade contractors.
- 2.4.11.9 Safety – Provide a safety program for the Project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform Work in accordance with the best acceptable practice.
- 2.4.11.10 Record Drawings - The Construction Manager shall monitor the progress of his own forces and his Subcontractors on marked up field prints, which at project completion, shall be sent to the Architect/Engineer, who will prepare the final record drawings. The Construction Manager shall continuously review "As-Built" Drawings and marked up progress prints to provide as much accuracy as possible.
- 2.4.11.11 Systems Maintenance and Instruction - The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey those to the County in such a manner as to promote their usability. The Construction Manager shall provide County's operations and maintenance personnel with operations and maintenance training with respect to the equipment and systems being provided as part of the Work. This training shall be videotaped by Construction Manager for subsequent presentation to County's operations and maintenance personnel.
- 2.4.11.12 Administrative Records - Construction Manager shall maintain in a safe place at the Project Site Office Facility, one record copy and one permit set of the Contract Documents, including, but not limited to, all Construction Documents, addenda, amendments, Change Orders, Construction Change Directive and Field Orders, as well as all written interpretations and clarifications issued by Architect/Engineer, in good order and annotated to show all changes made during construction. The record Contract Documents shall be updated by Construction Manager throughout the prosecution of the Work to accurately reflect all field changes that have been made to adapt the Work to field conditions, changes resulting from Change Orders, Construction Change Directive and Field Orders, and all concealed and buried installations of piping, conduit and utility services. Construction Manager shall certify the accuracy of the updated record Contract Documents. As a condition precedent to County's obligation to make a monthly progress payment, Construction Manager shall provide evidence, satisfactory to County's Representative and

Architect/Engineer, that Construction Manager is fulfilling its obligation to update the record Contract Documents. All buried and concealed items, within the Project site, shall be accurately located on the record Contract Documents as to depth and in relationship to not less than 2 permanent features. The record Contract Documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The record Contract Documents, together with all approved samples and a counterpart of all approved shop drawings, shall be available to County's Representative and Architect/Engineer for reference. In addition, the Construction Manager shall be required to maintain at the Project Site Office Facility on a current basis, electronic and/or copies of files and records such as, but not limited to the following:

- Contracts [subcontracts]
- Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Contract Drawings and Specifications with Addenda
- Warranties and Guarantees
- Cost Accounting Records
- Labor Costs
- Material Costs
- Equipment Costs
- Cost Proposal Requests
- Payment Request Records
- Meeting Minutes
- Cost Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Construction Change Directives
- Permits
- Purchase Orders
- Material Purchase Delivery Logs
- Technical Standards
- Design Handbooks
- "As-Built" Marked Prints
- Operating & Maintenance Instruction
- Daily Progress Reports
- Monthly Progress Reports
- Correspondence Files
- Transmittal Records
- Inspection Reports
- Bid/Award Information
- Bid Analysis and Negotiations
- Punch Lists
- PMIS Schedule and Updates
- Suspense (Tickler) Files of Outstanding Requirements
- Project Manual
- Job Photographs

## 2.5 Final Completion:

- 2.5.1 Substantial Completion: When the entire Work (or any portion thereof designated in writing by County) is ready for its intended use, Construction Manager shall notify County's Representative and Architect/Engineer in writing that the entire Work (or such designated portion) is substantially complete and request that Architect/Engineer prepare a Certificate of Substantial Completion (or a

Certificate of Partial Substantial Completion), a copy of which is attached as **Exhibit "D"**. Said written notice from Construction Manager shall include a proposed punch list of all items of Work to be completed or corrected by Construction Manager. Within a reasonable time thereafter, County's Representative, Construction Manager and Architect/Engineer shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If County's Representative and Architect/Engineer do not consider the Work (or designated portion) substantially complete, Architect/Engineer shall notify Construction Manager in writing giving the reasons therefore. If County and Architect/Engineer consider the Work (or designated portion) substantially complete, Architect/Engineer shall deliver to Construction Manager the Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by Construction Manager and include a final punch list of items to be completed or corrected by Construction Manager before final payment. Failure to include an item on the final Punch List does not waive County's right to demand completion of the item pursuant to the Contract Documents prior to or after final payment.

- 2.5.2 **Final Acceptance:** When Construction Manager believes it has fully performed all of the Services, including all punch list items, Construction Manager shall deliver to County's Representative all items listed on **Exhibit "G"**, which includes, but is not limited to, a written Release and Affidavit from Construction Manager certifying that all Work has been completed in accordance with the requirements of the Contract Documents. That written affidavit shall be in conformance with **Exhibit "E"** and shall be delivered to County's Representative by Construction Manager at the same time it submits its final Application for Payment. After receipt of such affidavit, the final Application for Payment and all other documents required for Project close-out, Architect/Engineer and County's Representative shall promptly inspect the Work to determine if all of the Work has been completed and is ready for Final Acceptance by County. If County's Representative and Architect/Engineer determine Construction Manager has completed the entire Work and performed all of the Services, County's Representative shall promptly approve the Final Completion Certificate of the Project, stating that, to the best of its knowledge, information and belief, and on the basis of its observations and inspections: (i) all of the Services have been completed in accordance with the requirements of the Contract Documents; (ii) the final balance due Construction Manager, as noted in the final Certificate for Completion, is due and payable; and (iii) all conditions precedent to Construction Manager's entitlement to final payment has been satisfied. Neither the final payment nor any retainage shall become due and payable until Construction Manager submits: (1) the final Release and Affidavit in the form attached to the Agreement as **Exhibit "E"**, (2) consent of surety to final payment, and (3) other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by County. County reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Architect/Engineer may have issued its recommendations. Until the Construction Manager completes all of its contractual obligations, with the exception of the Warranty period, neither the final payment nor any retainage shall become due and payable.
- The County may occupy or take control of portions of the project providing the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements specified in Article 2, Sections 2.4.11.8, 2.4.11.10, 2.5.1 and 2.6 have been completed to the County's satisfaction for the portions to be occupied, excluding the requirements for a warranty inspection eleven (11) months after Substantial Completion.

## 2.6 Warranty and Corrective Period

- 2.6.1 The Construction Manager shall warrant that all materials and equipment included in the Work will be new, except where indicated otherwise in Contract Documents, and that the Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Construction Documents.

- 2.6.2 The Construction Manager shall collect and deliver to the County's Representative any specific written warranties given by others as required by the Contract Documents. Also, the Construction Manager shall conduct, jointly with the County's Representative and the Architect/Engineer, a warranty inspection eleven (11) months after the date of Substantial Completion of the Project. Construction Manager shall obtain and assign to County all express warranties given to Construction Manager by any subcontractors or by any materialmen supplying materials, equipment or fixtures to be incorporated into the Project. Construction Manager further warrants to County that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. Further, any special warranty to be provided will be in such form as is acceptable to County and shall not include any exclusions, exceptions or modifications except to the extent approved by County in its sole discretion.
- 2.6.3 In addition to the express warranties provided for in Sections 2.6.1 and 2.6.2, and all other rights and remedies available to County at law or in equity, including any implied warranties County may be entitled to as a matter of law, Construction Manager shall promptly correct, upon receipt of written notice from County's Representative, any portion of the Work which is found to be defective or otherwise not in conformance with the requirements of the Contract Documents. In the event that any defective or non-conforming work is deemed by County in its sole discretion to present an immediate threat to safety or security, County shall be entitled to correct and fix such defective or non-conforming portions of the Work, and Construction Manager shall reimburse County for all costs and expenses incurred by County in performing such Work. This obligation to correct defective or nonconforming Work shall run for a period of one year (or such longer period of time as may otherwise be specified in the Contract Documents) commencing from the date Substantial Completion is achieved.
- 2.6.4 With respect to the correction of any defective or nonconforming Work, Construction Manager shall be liable for all damage to any part of the Work itself and to any adjacent property which is caused by such corrective work. Construction Contingency Funds may be utilized to correct such damage provided that damage was not caused by negligence on the part of the Construction Manager. Construction Manager's warranty excludes remedy for damage or defect caused by County's abuse, modifications not performed by Construction Manager, improper or insufficient maintenance by County (unless such maintenance was performed in accordance with the directions from Construction Manager), improper operation by County (unless such operations were performed in accordance with the directions from Construction Manager), or normal wear and tear under normal usage.

### ARTICLE 3

#### COUNTY'S RESPONSIBILITIES

3.1 County's Information:

The County shall provide full information regarding the requirements for the Project.

3.2 County's Representative:

The County shall designate in writing any additional representatives authorized to act on the County's behalf with respect to the Project, together with the scope of his/her respective authority. In no event, shall any delegation of authority be contrary to State or County laws or codes. Such designations as of the date hereof are set forth in Section 1.3.18. Functions that this Agreement provides, which will be performed by the County, can be delegated by written notice to the Construction Manager from the County. The designation(s) of County's Representative, as set forth in Section 1.3.18, may be amended from time to time by the County, pursuant to written notice to the Construction Manager of such amendment. The Construction Manager shall be entitled to rely on directions (and it shall be required to follow directions) from the County's Representative within the authority conferred by the Board of County Commissioners in this Agreement or any Amendment or Change Order to this Agreement. Polk County Board of County Commissioners hereby authorizes the County's Representative to: (1) act as the Board's agent and execute documents associated with the Project. Examples of these documents are Notices of Commencement, Certificates of Substantial and Final Completion and permits from applicable agencies; (2) administer, coordinate, interpret and otherwise manage the contractual provisions and requirements of this Agreement; (3) negotiate a duly authorized Change Order on behalf of the County; and (4) issue a duly authorized memorandum, letter or other instrument covering the services and work to be provided pursuant to this Agreement. Directions and decisions made by County's Representatives shall be binding on the County. The County's Representative does not have the authority to authorize work beyond the scope of the Contract Documents.

The County additionally authorizes the County Manager, or his designee, in conjunction with the County's Representative, to authorize individual changes in the Work up to \$100,000.00. Said changes shall be funded from the County's Allowance and shall not cause an increase to County's Project Budget.

3.3 Design Engineer and Engineer's Agreement:

The County shall retain an Architect/Engineer for design and to prepare Construction Documents for the Project. The Architect/Engineer's services, duties and responsibilities are described in the Agreement between the County and the Architect/Engineer, a copy of which will be furnished to the Construction Manager.

3.4 Site Survey and Reports:

The County shall provide for the site of the Project all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description.

3.5 Approvals and Easements:

The County shall pay for necessary approvals, properties, easements, assessments and charges required for the construction, use or acceptance of permanent structures or for permanent changes in existing facilities.

3.6 Legal Services:

The County shall furnish such legal services as may be necessary for providing the items set forth in Article 3, Section 3.5, and such auditing services as it may require.

3.7 Construction Documents:

The Construction Manager will be furnished a reproducible set of all copies of the Construction Documents reasonably necessary and ready for printing.

3.8 Cost of Surveys & Reports:

The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the County's expense. Construction Manager shall rely upon the accuracy and completeness thereof as noted in the various reports and surveys. Additional reports or surveys deemed to be necessary by the Construction Manager shall be obtained by the Construction Manager.

3.9 Project Fault Defects:

If the County becomes aware of any fault or defect in the Project or non-conformance with the Construction Documents, the County shall give prompt written notice thereof to the Construction Manager and Architect/Engineer.

3.10 Funding:

The County shall furnish, in accordance with the established Master Program Schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project. The Construction Manager shall not commence performance of any Services, unless authorized in writing by the County.

3.11 Permitting & Code Inspections:

The County and Construction Manager shall coordinate with the appropriate permitting authorities.

## ARTICLE 4

### CONTRACT TIME

4.1 The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Final Completion of the Work is referred to hereafter as the "Contract Time". With respect to the Construction Phase Services, the "Construction Phase Commencement Date" shall be established in the GMP Addendum. No portion of the Work, with respect to the Construction Phase Services, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by the County in writing. The GMP Addendum shall also include the date that portion of the Work associated with the Construction Phase Services must be substantially completed by Construction Manager. The "Substantial Completion" date shall be established in terms of calendar days after the Construction Phase Commencement Date. Unless noted otherwise, the Final Completion Date is 30 (thirty) days after Substantial Completion. In the event Construction Manager and County fail to reach an agreement on the Contract Time, County may elect to terminate this Agreement. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Amount attributable to the Pre Construction Phase Services earned to the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance and in writing by County; but Construction Manager shall not be entitled to any further or additional compensation from County, including, but not limited to, damages or lost profits on portions of the Work not performed.

4.2 Liquidated Damages. County and Construction Manager recognize that, since time is of the essence for this Agreement, County will suffer financial loss if the Work associated with the Construction Phase is not substantially completed within the time specified in the GMP Addendum, as said time may be adjusted as provided for herein. In such event, the total amount of County's damages, will be difficult, if not impossible, to definitively ascertain and quantify, because this is a public construction project that will, when completed,



benefit the public in Polk County, Florida. It is hereby agreed that it is appropriate and fair that the County receive liquidated damages from Construction Manager, if Construction Manager fails to achieve Substantial Completion of the Work within the required Contract Time. Should Construction Manager fail to substantially complete the Work within the required time period, the County shall be entitled to assess, as liquidated damages, but not as a penalty, the amount specified in the GMP Addendum, for each calendar day thereafter until Substantial Completion is achieved. Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represent a fair and reasonable estimate of County's actual damages at the time of contracting if Construction Manager fails to substantially complete the Work in a timely manner.

## **ARTICLE 5**

### **CONTRACT TIME EXTENSIONS**

- 5.1 Should Construction Manager be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Construction Manager, and not due to its fault or neglect, including but not restricted to acts of God or the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes, lockouts, utility work being performed within the Project limits, or by unusually severe weather conditions by comparison with the ten year Polk County, Florida average not reasonably anticipatable, Construction Manager shall notify County's Representative and Architect/Engineer, in writing within seven (7) calendar days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Construction Manager may have had to request a Contract Time Extension. Contract Time Extension requests shall be evaluated through the Change Order process.
- 5.2 If Construction Manager encounters on the Project site any materials reasonably believed by Construction Manager to be petroleum, or petroleum related products, or other hazardous or toxic substances which have not been rendered harmless, Construction Manager immediately shall: (i) stop Work in the area affected, and (ii) report the condition to County's Representative in writing. If the Work is so stopped in excess of ten (10) days and hazardous material is found, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include, but not be limited to, an adjustment to the Contract Time as appropriate. If no hazardous material is found after the Work is stopped, no Change Order is required to resume the Work in the affected area. Further, if the hazardous material was generated or caused by the Construction Manager or any of its employees, agents, subcontractors, or material suppliers, no Change Order will be required for an adjustment in the Contract Time and Construction Manager shall indemnify the County and hold County harmless for any costs incurred by the County with respect to such material.
- 5.3 NO DAMAGES FOR DELAY. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which the County and Architect/Engineer may be responsible, in whole or in part, shall relieve Construction Manager of his duty to perform, or give rise to any right to damages or additional compensation from the County. Construction Manager's sole remedy, if any, against the County will be the right to seek an extension to the Contract Time and the payment of additional Costs of the Work and associated increase in the Construction Manager's Fee, as allowed pursuant to Article 6. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion. In no event shall the County be liable to Construction Manager, whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, special, indirect, incidental, or consequential damages of any kind or nature whatsoever.

## ARTICLE 6

### CONTRACT AMOUNT

- 6.1 In consideration of the full and faithful performance by the Construction Manager of the covenants in this Agreement, County agrees to pay, or cause to be paid, to Construction Manager the following amounts (hereinafter collectively referred to as "Contract Amount"), in accordance with the terms of this Agreement and with the Hourly Rate Schedule attached hereto and incorporated herein as Exhibit "K". The Hourly Rate Schedule identifies all job classifications which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.
- 6.1.1 Pre-Construction Phase Services - For all Pre-Construction Phase Services enumerated in this Agreement, including, but not limited to, providing value engineering, reviewing documents for constructability, assisting and meeting with the County and the Design professionals, preparing cost estimates and schedules and preparing the GMP Proposal, Construction Manager shall receive the lump sum amount as specified in the Pre-Construction Services Addendum and in accordance with the payment schedule set forth in said Addendum.
- 6.1.2 Construction Phase Services – With respect to the Construction Phase Services to be provided by Construction Manager, County shall: 1) reimburse Construction Manager for the Cost of the Work; and 2) pay the Construction Manager a Construction Manager's Fee to be negotiated as part of the GMP Addendum process.
- 6.1.2.1 Construction Manager's Fee: The Construction Manager's Fee shall be Construction Manager's total compensation for the Construction Manager's profit on the Cost of the Work, as defined below. Construction Manager agrees to provide County with a GMP Proposal for the total sum of the Construction Manager's Fee, plus the Cost of the Work, plus the Construction Manager's Contingency, after the Construction Manager determines the Construction Documents are sufficiently complete.
- 6.1.2.2 The GMP Proposal shall be based upon actual subcontractor cost proposals with the various subcontractors. Further, the proposal shall be broken down into the categories and level of detail required by County's Representative. Construction Manager agrees that all its books, records and files, with respect to its development of the GMP Proposal, shall be open to County for review and copying. The final GMP Proposal shall be mutually agreed upon by County and Construction Manager and shall be set forth in the GMP Addendum (Exhibit "C"). The GMP Addendum shall further identify the drawings, specifications (Schedule 1 of the GMP Addendum) and other descriptive documents (Schedule 4 of the GMP Addendum) upon which the GMP is based. The Construction Manager guarantees that in no event shall the sum of the Construction Manager's Fee, the total Cost of the Work, and the Construction Manager's Contingency exceed the GMP. The Construction Manager acknowledges multiple GMP Addendums may be required for the portions of the Project to support the Project phasing and schedule.
- 6.1.2.3 The amount to be paid for Construction Manager's Fee shall be a fixed fee of 4%. The Construction Manager's Fee shall be paid proportionally to the ratio of the Cost of the Work completed. The balance of the Construction Manager's Fee shall be paid at Final Completion. If construction is authorized for a portion of the Project, the Construction Manager's Fee shall be paid proportionally to the amount of the Work authorized by the County.
- 6.1.2.4 In the event Construction Manager and County fail to reach an agreement on the GMP, the County may elect to terminate this Agreement. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Amount attributable to the completed Pre Construction Phase Services; but Construction Manager

shall not be entitled to any further additional compensation from County, including but not limited to damages or lost profits on portions of the Work not performed. Construction Manager may be required to continue to provide all other agreed upon Pre Construction services.

6.1.2.5 The Construction Manager will not be due any increases in the Construction Manager's Fee on increases in the GMP value that do not exceed a cumulative total of a specified amount which shall be stated as a "nominal overage" in the GMP Addendum. Should the GMP value be increased by more than such nominal overage amount under the terms of Article 7 hereinafter due to no fault of the Construction Manager, the Construction Manager's additional Construction Manager's Fee will be (5) five percent of that portion of the accumulative increases in the GMP value that exceed the GMP value by more than such nominal overage amount.

6.1.3 Cost of the Work. The Phrase "Cost of the Work" shall mean all costs necessarily and reasonably incurred by Construction Manager in the proper performance of the Construction Phase Services portion of the Services. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of County only after Construction Manager has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. The Cost of the Work shall include only those items set forth below in this subsection 6.1.3:

6.1.3.1 Construction Phase Costs: The following items constitute the elements that can be included in the Construction Phase Cost calculations.

6.1.3.1.1 Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project site or, with County's written agreement, at off-site workshops;

6.1.3.1.2 Wages of Construction Manager's supervisory, technical and administrative personnel who are stationed at the Project site as specified in Schedule 1 to the proposed GMP;

6.1.3.1.3 Wages of Construction Manager's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with County's written agreement;

6.1.3.1.4 Wages of Construction Manager's supervisory, technical, and administrative personnel when assigned to this Project and specifically working on this Project in the Construction Manager's administrative or home office, as specified in Schedule 1 to the proposed GMP ;

6.1.3.1.5 Payments made by Construction Manager to subcontractors in accordance with the requirements of the applicable written subcontracts;

6.1.3.1.6 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents;

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

6.1.3.1.8 Minor expenses at the site, such as internet, long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project are to be included in your Construction Management fee.

6.1.3.2 Subcontract and Material Costs. All Subcontractor Costs will be documented and signed by Subcontractor invoices and all material costs will be documented by copies of invoices. Subcontract and Material Costs may also be referred to as "Reimbursable Costs". All requests for payment of expenses eligible for reimbursement under the terms of this Agreement, unless otherwise specifically stated herein, shall be reimbursed per the County's Reimbursable Schedule that is attached hereto as Exhibit "J" and made a part of this Agreement. Reimbursable Costs shall include:

6.1.3.2.1 Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacement, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a sub-contractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area;

6.1.3.2.2 Cost of the premiums for all insurance and cost of premiums for all bonds, which the Construction Manager is required to procure by this Agreement specifically for the construction project. General Liability will be cost at a fixed rate of a specified percentage, to be stated in the GMP Addendum of the final Contract Amount, adjusted to include any previously deducted County Direct Purchase amounts, and Construction Manager bonds will be cost at a fixed rate of a specified percentage, to be stated in the GMP Addendum. The premium stated will be substantiated with industry standard documentation. The cost of the work shall include any subcontractor bonds the Construction Manager deems appropriate. **There shall be no Construction Phase Fee on this item;**

6.1.3.2.3 Losses and expenses sustained by the Construction Manager in connection with the work, not compensated by insurance, including deductibles, provided they have resulted from causes other than the negligent misconduct of Construction Manager;

6.1.3.2.4 Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable;

6.1.3.2.5 The cost of corrective work, subject to the GMP, except for any corrective work made necessary because of defective workmanship, or other causes due to the negligence of the Construction Manager or his subcontractors or suppliers. No costs shall be paid by the County to the Construction Manager for any expenses made necessary to correct defective workmanship, or to correct any work not in conformance with the Plans and Specifications, or to correct any deficiency or damage caused by negligent acts by the Construction Manager;

6.1.3.2.6 Costs for repairs and maintenance, which are consistent with industry standards associated with work required during the warranty period, which may be the responsibility of Construction Manager. This shall not apply to work, which is the responsibility of Subcontractors, except in the case of a Subcontractor's default;

6.1.3.2.7 Costs for trash and debris control and removal from the site;

6.1.3.2.8 Costs incurred due to an emergency affecting the safety of persons and property;

- 6.1.3.2.9 Legal costs reasonably and properly resulting from prosecution of the Project for the County, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations: 1) The County approved, in writing, incurring such costs in advance, which approval shall be in the County's sole discretion; and 2) the legal costs were not incurred as result of the Construction Manager's own negligence or default. This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by Construction Manager itself, for change orders, or in enforcing the obligations of this Agreement;
- 6.1.3.2.10 Transportation outside of Polk County for those personnel employed directly for the project, not including relocation expenses. Such transportation must be extraordinary and be approved in advance by the County's Representative, and will be in accordance with the County's standard personnel policy;
- 6.1.3.2.11 Costs for watchman and security services for the project, if necessary;
- 6.1.3.2.12 Costs for efficient logistical control of the Project, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space;
- 6.1.3.2.14 Costs for such temporary facilities and temporary protection during construction, as approved by the County, including temporary water, heat, power, sanitary facilities; and
- 6.1.3.2.15 Costs for any job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the Work;
- 6.1.3.2.16 Costs, including transportation, installation, maintenance, dismantling and removal or materials, supplies, temporary facilities (including Project field offices, furniture and fixtures), temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Manager;
- 6.1.3.2.17 Rental charges, at standard industry rates for the area, for temporary facilities, machinery, vehicles, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site, whether rented from Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Construction Manager or others, shall be subject to the prior written approval of County's Representative;
- 6.1.3.2.18 Costs, fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Manager is required by the Contract Documents to pay;
- 6.1.3.2.19 Cost of Public Information Programs or other neighborhood functions hosted by Construction Manager at the direction of County's Representative;
- 6.1.3.2.20 Costs of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Agreement;

- 6.1.3.2.21 Cost of documentation, inspection and testing as required for the preparation of the Final Estimate and implementation of the FDOT Contractor Quality Control process;
- 6.1.3.3 Costs Not To Be Reimbursed. The Cost of the Work shall not include the following items: Except as provided in Article 6, Section 6.1.3.1:
  - 6.1.3.3.1 Temporary living and travel expenses of employees who are not relocated, but are assigned to the Project;
  - 6.1.3.3.2 Except as provided in the Fringe Benefits rate included in Article 6, Section 6.1.3.1.4, expenses of Construction Manager's principal office and offices other than the Project site office;
  - 6.1.3.3.3 Overhead and general expenses, except as may be expressly included in Article 6, Section 6.1.3.1 and 6.1.3.2;
  - 6.1.3.3.4 Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the project;
  - 6.1.3.3.5 Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Work;
  - 6.1.3.3.6 Rental costs of machinery and equipment, except as specifically provided in Article 6, Section 6.1.3.2.1;
  - 6.1.3.3.7 Except as expressly provided in Article 6, Section 6.1.3.2.5, costs due to the negligence of Construction Manager, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied;
  - 6.1.3.3.8 Any costs not specifically and expressly described in Article 6, Section 6.1.3.1 and 6.1.3.2 above;
  - 6.1.3.3.9 Construction Manager is responsible, without reimbursement from County, for re-inspection fees and costs; to the extent such re-inspections are due to the negligence of the Construction Manager;
- 6.1.3.4 Adjustments in Construction Phase Costs: For changes in the Project as provided in Article 7, the Construction Phase Costs shall be adjusted as follows:
  - 6.1.3.4.1 The Construction Manager shall be paid an additional amount, subject to negotiation, if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss, excluding any condition that may have been caused from negligent acts by the Construction Manager.
  - 6.1.3.4.2 Should the construction duration for any phase extend longer than stipulated above, there shall be no additional Construction Phase Costs or Construction Manager's Fee paid to the Construction Manager, unless such delays are as defined in Article 7.
- 6.1.4 County's Allowance: The GMP Addendum shall include the County's Owner Allowance, which permits the County to authorize the Construction Manager to perform work which may not have been specifically addressed in the original contract documents, but which the County deems

necessary for the project. The County's Allowance is also intended to protect against price increases between the GMP Addendum and the completion of the 100% Construction Documents, as well as for the purpose of defraying the expenses due to unforeseen circumstances relating to construction, and for price increases attributable to any code compliance reviews. The Construction Manager will be required to furnish documentation evidencing expenditures charged to the County's Allowance prior to the release of funds by the County. Documentation for use of the County's Allowance shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. The Architect/Engineer shall verify the actual costs. The maximum dollar amount of permitted Allowance Work shall be 5% of the GMP or \$250,000, whichever is less. The County Manager or his designee can approve the use of the County's Allowance up to \$50,000 per occurrence. When allowance funds are utilized for changes and/or additions to the work, the CM shall submit a written request to the County's Representative, in the same manner as a change order request. The County's Representative shall prepare an Allowance Authorization Release, in form attached here to as Exhibit "I" to this Agreement.

The GMP Addendum may, at the County's discretion, also contain allowance time, not to exceed fifteen (15) percent of the total amount of time allotted for the work. This time shall be used for any unforeseen changes to the work which may cause the time to be extended and will be granted via an Allowance Authorization Release, approved by the County Manager or his designee.

6.1.4.1 Following the full execution of the GMP Addendum, at a point mutually agreed upon between the County's Representative and Construction Manager, the net amount of the buyout will be reviewed. If the net amount of the total buyout results in excess funds being required, those funds may be taken from the County's Allowance. If the net amount of the buyout results in a savings, the savings will be assigned to the County's Buyout Allowance.

6.1.5 The County's Buyout Allowance shall be created by savings generated by the subcontractor buyout, unused contingency funds, and also by reductions in scope that otherwise could reduce the GMP. The intent of this County's Buyout Allowance is to allow funds already approved within the GMP Addendum to remain and be used at the County's discretion for scope issues that may become required and/or desired during the course of the project. Authorizations up to \$100,000, for the use of the County's Buyout Allowance, will be granted by the County Manager, or his designee. Authorizations for more than \$100,000 will be required to be obtained from the Board. The County's Representative shall prepare an Allowance Authorization Release, in form attached here to as Exhibit "N" to this Agreement.

## ARTICLE 7

### CHANGE IN THE PROJECT

#### 7.1 Change Orders:

7.1.1 County shall have the right, at any time during the progress of the Work, to increase or decrease the Work. Promptly after being notified of a change, but in no event more than 14 days after its receipt of such notification (unless County's Representative has agreed in writing to a longer period of time), Construction Manager shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or for minor changes ordered by the Architect/Engineer, no addition or changes to the Work shall be made except upon written order of County, and County shall not be liable to Construction Manager for any increased compensation or adjustment to the Contract Time without such written order.

7.1.1.1 **Prompt Processing of Change Orders:** Pursuant to §218.755, Fla. Stat., for any contract for construction services, if (1) County receives from Vendor a price quote for a change

order requested or issued by the County for construction services, and (2) the price quote conforms to all statutory requirements and contractual requirements for the project, then County shall approve or deny the price quote and send written notice of that decision to Vendor within thirty-five (35) days after receipt of such quote. If the County issues a denial notice, then the County shall specify the alleged deficiencies in the price quote and the actions necessary to remedy those deficiencies. If the County fails to provide the contractor with a notice in compliance with this section, then the change order and price quote are deemed approved, and the County shall pay the contractor the amount stated in the price quote upon the completion of the change order.

- 7.1.2 A Change Order, in form attached here to as Exhibit "H" to this Agreement, shall be prepared by County's Representative, reviewed by Architect/Engineer and Construction Manager, and executed promptly by the parties after an agreement is reached between Construction Manager and County, concerning the requested changes. Construction Manager shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as County and Construction Manager shall mutually agree.
- 7.1.3 Notwithstanding anything in the Contract Documents to the contrary, if conditions are encountered at the Project site which are: (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of any unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and which reasonably would not have been discovered by Construction Manager as part of its scope of site investigative services required pursuant to the terms of the Contract Documents, then Construction Manager shall provide County's Representative with prompt written notice thereof before conditions are disturbed and in no event later than 48 hours after first observance of such conditions. County's Representative and Architect/Engineer shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Construction Manager's cost of, or time required for, performance of any part of the Work, County will acknowledge and agree to an equitable adjustment to the Contract Amount or Contract Time, or both, for such Work. If County's Representative determines that the conditions at the site are not materially different from those indicated in the Contract Document or not of an unusual nature or should have been discovered by Construction Manager as part of its investigative services, and that no change in the terms of the Contract is justified, County shall so notify Construction Manager in writing, stating its reasons. Claims by Construction Manager in opposition to such determination by County must be made within 48 hours after Construction Manager's receipt of the written determination of County's Representative. If County's Representative and Construction Manager cannot agree on an adjustment to the Contract Amount or Contract Time, the parties shall comply with the dispute resolution procedure set forth in the Contract Documents.
- 7.1.4 The increase or decrease in the GMP as set forth in the GMP Addendum resulting from a change in the Project shall be determined in one or more of the following ways: 1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect/Engineer and County's Representative, or 2) by unit prices stated in the Agreement or subsequently agreed upon.
- 7.1.5 If none of the methods set forth in Article 7, Section 7.1.4 is agreed upon, the Construction Manager, provided he receives a written order signed by the County, shall promptly proceed with the Work involved. The increase or decrease in the GMP shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Construction Manager shall establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate, without prior written approval by the County's Representative. In such case, and also under Article 7, Section 7.1.4 above, the Construction Manager shall keep and present, in such form as the County's Representative may prescribe, an



itemized accounting together with appropriate supporting data of the increase in the Cost of the Work as outlined in Article 6., Section 6.1.3.2 .

- 7.1.6 If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order, and that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the County or the Construction Manager, the applicable unit prices and GMP shall be equitably adjusted.
- 7.1.7 In the event the Construction Manager encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, petroleum waste, biohazardous substances, radioactive waste or any other substance falling within the category of hazardous or toxic waste under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or any other state or federal environmental statute or regulation, hereinafter collectively referred to as "hazardous waste," the Construction Manager shall immediately stop Work in the area affected and report the condition to the County in writing. County shall thereafter, as soon as reasonably possible, conduct a thorough investigation to determine if the suspected material in the affected area is in fact hazardous waste and shall certify to Construction Manager that such material is not hazardous waste, or if such material is in fact hazardous waste that such hazardous waste has been abated and that it is safe to return to the affected area and resume work. The Construction Manager may require the County to furnish copies of reports of tests conducted by a qualified testing laboratory acceptable to Construction Manager verifying the absence of such hazardous waste before Construction Manager will be required to resume work. The Contract time and amount shall thereafter be equitably adjusted to account for the time lost due to the encountering of the hazardous waste and the reasonable cost associated therewith. The Construction Manager shall, through an analysis of network schedule, prove such time delays and associated costs.
- 7.1.8 The Construction Manager shall not be required to perform any work relating to hazardous waste without consent pursuant to the changes clause herein.
- 7.1.9 *Intentionally omitted.*
- 7.1.10 Claims for Additional Cost or Time: All claims for additional cost or time, in excess of what is addressed in Article 6.1.4, shall be made by request for a Change Order submitted as provided in this Article. The Substantial Completion date shall be extended by Change Order for such reasonable time as the Construction Manager may determine. If the Construction Manager is delayed at any time in the progress of the Work by any act or neglect of the County or the Architect/Engineer or of any employee of either or by any separate Construction Manager employed by the County or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the County pending resolution of disputes, and such delay extends the completion date, then the dates for completion may be equitably adjusted. Only delays, which are determined to extend the critical path of the schedule for constructing the project, will result in a time extension.
- 7.1.11 Minor Changes in the Project: The County will have authority to order minor changes in the Project not involving an adjustment in the Contract Amount or Contract Time and not inconsistent with the intent of the Construction Documents. Such changes shall be effected in writing. The Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. Changes shall be approved by the County and Architect/Engineer.
- 7.1.12 Emergencies: In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the GMP or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided herein. Construction Manager shall take immediate action to prevent injury to any person or damage to any property (including the Work and any adjacent property) which otherwise might arise from an emergency event at the Project Site. If conditions

are such that it is safe to return to the Project site, Construction Manager shall give Architect/Engineer written notice within 48 hours after the occurrence of the emergency, if Construction Manager believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Architect/Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Construction Manager fails to provide the 48 hour written notice noted above, Construction Manager shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time. Construction Manager is obligated to promptly report in writing to County all accidents relating to the Work that result in any personal injury or property damage.

## **ARTICLE 8**

### **PAYMENTS TO THE CONSTRUCTION MANAGER**

#### **8.1 Progress Payments for Construction Phase Services**

- 8.1.1 Construction Manager's monthly Applications for Payment shall be in a form, as shown in **Exhibit "F"**, and shall contain such detail and backup as County reasonably may require. Such detail and backup shall include documentation of actual payments made.
- 8.1.2 At the time it submits its GMP Proposal to County, Construction Manager shall submit to County's Representative and Architect/Engineer, for their review, a Schedule of Values based upon the GMP Proposal. The Schedule of Values will be based on the major items of work. The Schedule of Values will be structured so that the costs of the major items of work can be allocated to the various elements of work. The Schedule of Values shall be updated for the current month Change Orders and submitted each month to Architect/Engineer along with a completed and notarized copy of the Application for Payment form attached to the Agreement as **Exhibit "F"**.
- 8.1.3 If the payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site or at an approved location off site, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that County has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect County's interest therein, all of which shall be subject to County's satisfaction.
- 8.1.4 Construction Manager shall submit a notarized original of its monthly Application for Payment to County's Representative, or Architect/Engineer, as directed by the County's Representative, on a monthly basis, on or before the 25<sup>th</sup> of each month. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Within seven calendar days after receipt of each Application for Payment, Architect/Engineer shall submit to County's Representative, a certification of the Application for Payment in the amount recommended by Architect/Engineer as being due and owing Construction Manager. Upon approval by County's Representative, payment shall be made to Construction Manager in accordance with the Florida Prompt Payment Act Statute 218.735. As a condition to the application for the monthly partial payment, the Construction Manager agrees that all as-built information will be recorded within 30 days after receipt of information that a change to the Construction Documents has occurred.
- 8.1.5 The County shall withhold from each progress payment made to the Construction Manager an amount equal to five percent (5%) of such payment as retainage, not to include amounts contained within general conditions, Public Construction Bond, or amounts for self-performed work. Such retained sums shall be accumulated and not released to the CM until final payment is due except that retainage on portions of the work completed by subcontractors may be reduced to zero percent (0%)

thirty (30) days after completion of said work, as agreed upon by the County. This Section 8.1.5 shall be subject to Section 218.735, Florida Statutes, or any amending or replacement statute.

8.1.6 Monthly payments to Construction Manager shall in no way imply approval or acceptance of Construction Manager's work.

8.1.7 Each Application for Payment shall be accompanied by a Release and Affidavit showing that all materials, labor, equipment and other bills associated with that portion of the Work payment is being requested on have been paid in full through the previous month's Application for Payment. County shall not be required to make payment until and unless these affidavits are furnished by Construction Manager. Further, if Construction Manager is withholding any portion of a payment to any subcontractor for any labor, services, or materials for which County has paid Construction Manager, Construction Manager agrees to refund such money to County.

## 8.2 Payments Withheld

Architect/Engineer shall review each Application for Payment submitted by Construction Manager and shall make recommendations to County's Representative as to the proper amounts, if any, which may be owed Construction Manager under the Application for Payment. Both Architect/Engineer and County's Representative shall have the right to refuse to certify or approve for payment any amounts, or portions thereof, requested by Construction Manager in an Application for Payment, and County's Representative may withhold any payments otherwise due Construction Manager under this Agreement, to the extent it is reasonably necessary, to protect County from any expense, cost or loss attributable to: (a) defective or deficient Work not properly remedied in accordance with the terms of the Contract Documents; (b) the filing or reasonable evidence indicating the probable filing of third party claims against County attributable to the negligence of Construction Manager; (c) Construction Manager's failure to make timely and proper payments to all subcontractors and suppliers; (d) reasonable evidence that the remaining Work cannot be completed for the unpaid Contract Amount balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract Time; (f) Construction Manager's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (g) any other material breach of the requirements of the Contract Documents by Construction Manager. County shall have the right, but not the obligation, to take any corrective action County deems appropriate to cure any of the above noted items, at the Construction Manager's expense, if Construction Manager has not started with a cure, to the County's reasonable satisfaction, of any of the above noted items within five working days after Construction Manager's receipt of written notice from County.

## 8.3 Final Payment.

County shall make final payment to Construction Manager provided the Work is finally accepted by County in accordance with Article 2, Section 2.5.2, and provided that Construction Manager first, and as an explicit condition precedent to the accrual of Construction Manager's right to final payment, shall have furnished County with a properly executed and notarized final release (conditioned only upon receipt of final payment) in the form of the Release and Affidavit attached to the Agreement as **Exhibit "E"**, as well as a duly executed copy of the surety's consent to final payment and such other documentation that may be required by the Contract Documents or County. Construction Manager's acceptance of final payment shall constitute a full waiver of any and all claims by Construction Manager against County arising out of this Contract or otherwise relating to the Project, except those identified in writing by Construction Manager as unsettled in the final Application for Payment. Neither the acceptance of the Work nor the payment by County shall be deemed to be a waiver of County's right to enforce any obligations of Construction Manager hereunder or to the recovery of damages for defective Work not discovered by County's Representative or Architect/Engineer at the time of final inspection. The Project will be considered complete when all Work has been completed and accepted by the Board of County Commissioners. The Construction Manager will then be released from further obligation except as set forth in Section 2.6 Warranty.

## ARTICLE 9

### INSURANCE, WAIVER OF SUBROGATION, AND INDEMNITY

#### 9.1 Construction Manager's Insurance:

- 9.1.1 The Construction Manager shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the County, nor shall the Construction Manager allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida with an A.M. Best & Company rating of no less than A. The insurance company must have a current A.M. Best & Company financial rating of Class VIII or higher. The insurance company must be duly licensed and authorized by the Department of Insurance of the State of Florida to transact the appropriate insurance business in the State of Florida. The insurance company must have been in such insurance business continuously for not less than 5 years prior to the date of the execution of this Agreement.
- 9.1.2 Worker's Compensation Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his employees connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the County, for the protection of employees not otherwise protected. Employers' liability shall be set at \$1,000,000/1,000,000/1,000,000.
- 9.1.3 Construction Manager's Public Liability and Property Damage Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect him from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be minimum limits as follows:
- 9.1.3.1 Construction Manager's Comprehensive General, \$1,000,000 Each (\$2,000,000 aggregate) Liability Coverages, Bodily Injury Occurrence, & Property Damage Combined Single Limit
  - 9.1.3.2 Automobile Liability Coverages, \$1,000,000 Each Bodily Injury & Property Damage Occurrence, Combined Single Limit
  - 9.1.3.3 Excess Liability, Umbrella Form \$2,000,000 Each Occurrence, Combined Single Limit
  - 9.1.3.4 Insurance clause for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis. There shall not be an EFIS Exclusion Endorsement on any general liability policy. The Products and Completed operations portions of the General Liability shall extend for a period of two years after the Final Acceptance of the Project by the County.
- 9.1.4 Subcontractor's Public Liability and Property Damage Insurance - The Construction Manager shall require each of his subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of his subcontractors in his policy, as specified above.
- 9.1.5 *Intentionally omitted.*

- 9.1.6 "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
- 9.1.7 Broad Form Property Damage Coverage, Products & Completed Operations Coverages - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.
- 9.1.8 Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
- 9.1.9 Certificate of Insurance - The County shall be furnished proof of coverage of Insurance as follows:
- 9.1.9.1 Certificate of Insurance form will be furnished to the County. These shall be completed and signed by an authorized Resident Agent. This Certificate shall be dated and show: the name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date. Such Certificates of Insurance shall be updated within five (5) business days of the expiration of or material change to any insurance evidenced on the Certificate of Insurance.
- 9.1.9.2 Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverages required in this Section.
- 9.1.9.3 Polk County, a political subdivision of the State of Florida, is to be named as an Additional Insured under all policies except for Worker's Comp.
- 9.1.9.4 The insurance evidenced by the certificate shall be primary and non-contributory to any other insurance of the certificate holder.
- 9.1.9.5 The Notice to Proceed will not be given until the Construction Manager has obtained all the insurance and Bonds required by the Contract Documents and such insurance has been approved by the County.
- 9.1.10 The Construction Manager shall not be required to provide Builder's Risk or Architects' and Engineers' Professional Liability Insurance unless specifically requested by the County. The County has Builder's Risk coverage and will provide the Construction Manager with appropriate Certificate of Insurance upon request. The County's Builder's Risk policy does not insure the Construction Manager's tools, machinery or equipment that is stored at the Project site. The Construction Manager should provide insurance in the form of an equipment floater for the Construction Manager's tools and equipment and the County should be named as an additional insured on the Construction Manager's policy with an appropriate waiver of subrogation as to any claims the Construction Manager or the Construction Manager's insurer may have against the County arising from the storage of the Construction Manager's tools and equipment. The Construction Manager shall be responsible for the first \$5,000 of any claim against the County's Builder's Risk policy.
- 9.1.11 The Construction Manager shall not allow a subcontractor to work on the Project without the subcontractor carrying its own Workers Compensation and Liability insurance or the Construction Manager covering the subcontractor under its policies. This requirement is the same for each succeeding sub-tier contractor. The Construction Manager shall provide proof of such coverage to the County upon the County's request.

## 9.2 Waiver of Subrogation:

- 9.2.1 The Construction Manager shall ensure all insurance policies it maintains in fulfillment of its obligations under this Agreement shall contain a waiver of subrogation against the County, its officials, employees, agents and consultants. Waiver of subrogation will apply to the general liability and workers compensation policies. The County, a political subdivision of the State of Florida, shall be named as an additional insured with respect to liability arising from all Services and work performed under this Agreement for automotive and general liability policies of insurance, and such policies should so state in the Certificate of Insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 9.2.2 The Construction Manager hereby waives all rights against the County for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

## 9.3 Indemnification of County

Construction Manager, to the maximum extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to County) protect and hold the County, and its officers, employees and agents harmless from and against any and all, claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses, and expenses (including, without limitation, attorneys' fees costs and expenses incurred during negotiation, through litigation and all appeals therefrom) whatsoever including, but not limited, to those pertaining to the death of or injury to any person, or damage to any property, arising out of or resulting from (i) the failure of Construction Manager to comply with applicable laws, rules or regulations, (ii) the breach by Construction Manager of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of Construction Manager's performance or nonperformance of this Agreement, or (iv) the negligent acts, errors or omissions, or intentional or willful misconduct, of Construction Manager, its professional associates, subcontractors, agents, and employees; provided, however, that Construction Manager shall not be obligated to defend or indemnify the County with respect to any such claims or damages arising out of the County's sole negligence. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the County, its agents, officials, and employees including alleged injury to the business or any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include, without limitation, the costs incurred by the County, its agents, officials and employees in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees, costs and expenses incurred by reason of the assertion of any such claim against the County, its agents, officials or employees. The Construction Manager expressly understands and agrees that any insurance protection required by this Agreement, or otherwise provided by the Construction Manager, shall in no way limit the Construction Manager's responsibility to release, indemnify, keep and save harmless and defend the County as herein provided. The intention of the parties is to apply and construe broadly in favor of the County the foregoing provisions subject to the limitations, if any, set forth in the Florida Statutes. The Construction Manager shall obtain an endorsement or other affirmative coverage from its insurance policies required by this Agreement insuring the Construction Manager's contractual obligations under this Section. The obligations imposed by this Section shall survive the expiration or earlier termination of this Agreement.

## ARTICLE 10

### TERMINATION OF THE AGREEMENT AND THE COUNTY'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

#### 10.1 Termination by the Construction Manager:

If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the County's failure to make payments thereon, then the Construction Manager may, upon seven (7) days written notice to the County, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit thereon and termination expenses incurred by the Construction Manager.

#### 10.2 County's Right to Perform Construction Manager's Obligations and Termination by County for Cause:

10.2.1 If the Construction Manager fails to perform any of his obligations under this Agreement, including any obligation he assumes to perform work with his own forces, the County may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligation, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the County of making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.

10.2.2 The County may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient if: the Construction Manager is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 45 days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a breach of a material provision of the Agreement. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished, nor shall he be relieved from his obligations assumed under Article 6. Reasonable terminal expenses incurred by the County may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

10.2.3 The County may terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the project by whatever method he may deem expedient, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to allow access to the County. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable termination expenses incurred by the County may be deducted from any payments left owing the Construction Manager (excluding moneys owed to the Construction Manager for subcontract work).

10.3 Termination by County Without Cause:

10.3.1 The County may, at any time, terminate this Agreement for the County's convenience and without cause.

10.3.2 Upon receipt of written notice from the County of such termination for the County's convenience, the Contractor shall:

10.3.2.1 Cease operations as directed by the County in the notice;

10.3.2.2 Take actions necessary, or that the County may direct, for the protection and preservation of the Work; and

10.3.2.3 Terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders, except for Work directed to be performed prior to the effective date of termination stated in the notice.

10.4 In case of such termination for the County's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable fee, as defined in Article 6, overhead and profit on the Work performed.

**ARTICLE 11**

**ASSIGNMENT AND GOVERNING LAW**

11.1 Neither the County nor the Construction Manager shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

11.2 This Agreement shall be governed by the Laws of the State of Florida. Venue shall be as specified in Section 13.2.3. The parties waive all rights to trial by jury.

**ARTICLE 12**

**NOTICE OF CLAIM: WAIVER OF REMEDIES**

12.1 The County's liability to the Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the County of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions, subject to Section 13.4 herein:

12.1.1 All claims must be submitted as a Request for Change Order in the manner as provided herein;

12.1.2 The Construction Manager must submit a Notice of Claim to County within 20 days of the Construction Manager becoming aware of the occurrence, or the event, giving rise to the claim; and

12.1.3 Within 10 days of submitting its Notice of Claim, the Construction Manager shall submit to the County its Request for Change Order, which shall include a written statement of all the details of the claim, including a description of the work affected.

The Construction Manager agrees that the County shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this paragraph to the extent that the County is prejudiced by the failure of the Construction Manager to give notice.

12.2 After receipt of a Request for Change Order, the County, in consultation with the Engineer, shall deliver to the Construction Manager its written determination of the claim.



- 12.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 6, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the County or the Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 12.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claims for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus 4% for profit. The Construction Manager expressly agrees that the foregoing constitutes its sole and exclusive remedy for delays and changes in such work, and eliminate any other remedies for claim, for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

### **ARTICLE 13**

#### **MISCELLANEOUS**

13.1 **Harmony:**

The Construction Manager is advised and hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by the Construction Manager and his Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the Project.

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

13.2 **Dispute Resolution:**

- 13.2.1 All claims, disputes and other matters in question (hereinafter referred to as a "Controversy") between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be initially submitted to mediation if mutually agreeable in accordance with the Construction Mediation Rules of the American Arbitration Association ("AAA") or any other mutually agreeable mediation firm.
- 13.2.2 Should either the County or the Construction Manager feel it necessary and appropriate to take any legal action to enforce any of the terms or conditions of this Agreement between said parties, then each party shall be responsible for its own attorney's fees and costs associated with such litigation.
- 13.2.3 Any litigation between the County and Construction Manager (which term for the purposes of this subparagraph shall include the Construction Manager's surety), whether arising out of any claim as described in Article 12, or Controversy arising out of this Agreement or any breach thereof, shall be brought, maintained and pursued only in the State of Florida's Tenth Judicial Circuit in and for Polk County, Florida or in the United States District Court, Middle District of Florida, located in Hillsborough County, Florida. Construction Manager consents and submits to the jurisdiction of such courts and agrees to accept service of process from the State of Florida in any matter to be submitted to any such court.

### 13.3 Construction Manager's Project Records and County's Auditing Rights

The Construction Manager's Project Records shall be maintained as prescribed hereinabove for the minimum period required by State and Federal Law, and shall be made available to the County or his authorized representative at mutually convenient times.

Construction Manager shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of 3 years from the date of termination of this Agreement or the date the Project is completed, whichever is later or such longer period of time as may be required by law. Construction Manager shall require all of its subcontractors to likewise retain all of their Project records and supporting documentation. County, and any duly authorized agents or representatives of County, shall be provided access to all such records and supporting documentation at any and all times during normal business hours upon request by County. Further, County, and any duly authorized agents or representatives of the County, including, without limitation, the Department of Inspector General of the Clerk of the Circuit Court and County Comptroller, shall have the right to audit, inspect and copy all of Construction Manager's and any subcontractor's Project records and documentation as often as they deem necessary and Construction Manager shall cooperate in any audit, inspection, or copying of the documents.

If at any time, the County, or its duly authorized agents or representatives, conducts such an audit of Construction Manager's records and documentation and finds that Construction Manager overcharged County, Construction Manager shall pay to County the Overcharged Amount which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of 12% annum). If the Audit Amount is equal to or greater than \$10,000.00, which is defined as the total aggregate of County's reasonable audit costs incurred as a result of its audit of Construction Manager, County may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Construction Manager with regard to the Project or under any other agreement between Construction Manager and County. If such amounts owed Construction Manager are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Construction Manager hereby acknowledges and agrees that it shall pay such remaining amounts to County within 30 business days of its receipt of County's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

This Article, including all access, inspection, copying, auditing, reimbursement and repayment rights shall survive the termination of this Agreement.

### 13.4 **LIMITATION OF LIABILITY**

**IN NO EVENT, SHALL THE COUNTY BE LIABLE TO THE CONSTRUCTION MANAGER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY THE COUNTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.**

### 13.5 Cleanup and Protections

Construction Manager agrees to keep the Project Site clean at all times of debris, rubbish and waste materials arising out of the Work. If Construction Manager fails to keep the Project Site clean, County has the right, after providing a 24 hour written notice, to perform any required clean up and to backcharge the Construction Manager for the costs of such clean up. At the completion of the Work, Construction Manager shall remove all debris, rubbish and waste materials from and about the Project Site, as well as all tools, appliances, construction equipment and machinery and surface materials, and shall leave the Project Site clean and ready for occupancy by County.

Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Construction Manager from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Construction Manager to condition at least equal to that existing at the time of Construction Manager's commencement of the Work.

13.6 Ownership of Documents

All analyses, reference data, bills, completed reports, or any other form of written instrument or document created or resulting from the Construction Manager's performance of the Services pursuant to this Agreement shall become the property of the County after payment is made to the Construction Manager for such instruments or documents.

13.7 No Contingent Fees

The Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Construction Manager, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from award of or making of the Agreement. For the breach or violation of this provision, the County shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

13.8 *Intentionally omitted.*

13.9 Public Entity Crimes

The Contractor Manager declares and warrants that neither the Contractor Manager nor any of the Contractor Manager's affiliates, as that term is defined in Section 287.133, Florida Statutes, are subject to the restrictions in Section 287.133, Florida Statutes, regarding the commission of a public entity crime. If during the term of this Agreement, the Contractor Manager or any affiliate is convicted of a public entity crime or is otherwise prohibited from performing work for or transacting business with the County pursuant to Section 287.133, Florida Statutes, then the Contractor Manager shall be in material default of this Agreement, and in such case, the County shall have the rights and remedies as provided herein.

13.10 Non-Discrimination

The Construction Manager warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

13.11 All Prior Agreements Superseded

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document or its designated exhibits. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. No modification, amendment or alteration in the terms or conditions contained herein, unless otherwise stated herein, shall be effective unless agreed to and executed in writing by both parties to this Agreement in a form acceptable to the County.

13.12 Independent Contractor

Nothing stated in this Agreement is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties, or as constituting the Construction Manager (including its

officers, employees, and agents) as the agent, representative, or employee of the County for any purpose, or in any manner, whatsoever. The Construction Manager is to be and shall remain forever an independent contractor with respect to all Services performed under this Agreement. The Construction Manager shall not pledge the County's credit or make the County a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and the Construction Manager shall have no right to speak for or bind the County in any manner.

### 13.13 Public Records Law

(a) The Construction Manager acknowledges the County's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and comply in the handling of the materials created under this Agreement. The Construction Manager further acknowledges that the constitutional and statutory provisions control over the terms of this Agreement. In association with its performance pursuant to this Agreement, the Construction Manager shall not release or otherwise disclose the content of any documents or information that is specifically exempt from disclosure pursuant to all applicable laws.

(b) Without in any manner limiting the generality of the foregoing, to the extent applicable, the Construction Manager acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

(1) keep and maintain public records required by the County to perform the services required under this Agreement;

(2) upon request from the County's Custodian of Public Records or his/her designee, provide the County 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 in Chapter 119, Florida Statutes, or as otherwise provided by law;

(3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if the Construction Manager does not transfer the records to the County; and

(4) upon completion of this Agreement, transfer, at no cost, to the County all public records in possession of the Construction Manager or keep and maintain public records required by the County to perform the service. If the Construction Manager transfers all public records to the County upon completion of this Agreement, the Construction Manager shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Construction Manager keeps and maintains public records upon completion of this Agreement, the Construction Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

**(c) IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**RECORDS MANAGEMENT LIAISON OFFICER  
POLK COUNTY  
330 WEST CHURCH ST.  
BARTOW, FL 33830  
TELEPHONE: (863) 534-7670  
EMAIL: RMLO@POLK-COUNTY.NET**

13.14 Compliance with Laws and Regulations

In providing all Services pursuant to this Agreement, the Construction Manager shall abide by all statutes, ordinances, rules, and regulations pertaining to or regulating the provisions of such Services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall entitle the County to terminate this Agreement immediately upon delivery of written notice of termination to the Construction Manager.

13.15 Governing Law and Venue

This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Polk County, Florida or in the United States District Court, Middle District of Florida, located in Hillsborough County, Florida. Each party shall be responsible for its own attorneys' fees and other legal costs and expenses.

13.16 Notices

Whenever either party desires to give notice unto the other, it must be given by written notice, delivered (i) in person, (ii) via registered or certified United States mail, postage prepaid with return receipt requested, or (iii) via nationally recognized overnight delivery service, and addressed to the party for whom it is intended at the place last specified by each party. The place for giving of notice shall remain such until it is changed by written notice delivered in compliance with the provisions of this Section 13.16. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For County:

Polk County Procurement  
330 West Church Street  
Drawer AS05  
Bartow, Florida 33830  
Attention: Procurement Director

For Construction Manager:

Marcobay Construction, Inc.  
3810 Drane Field Road - Suite 16  
Lakeland, FL 33811  
Attn: Jimmy Vessels

13.17 Severability

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement; any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

13.18 Annual Appropriations

Construction Manager acknowledges that during any fiscal year the County shall not expend money, incur any liability, or enter into any agreement which by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Accordingly, any agreement, verbal or written, the County may make in violation of this fiscal limitation is null and void, and no money may be paid on such agreement. The County may enter into agreements whose duration exceeds one year;

however, any such agreement shall be executory only for the value of the services to be rendered which the County agrees to pay as allocated in its annual budget for each succeeding fiscal year. Accordingly, the County's performance and obligation to pay the Construction Manager under this Agreement is contingent upon annual appropriations being made for that purpose.

13.19 **Employment Eligibility Verification (E-VERIFY)**

- A. Unless otherwise defined herein, terms used in this Section which are defined in Section 448.095, Florida Statutes, as may be amended from time to time, shall have the meaning ascribed in said statute.
- B. Pursuant to Section 448.095(5), Florida Statutes, the contractor hereto, and any subcontractor thereof, must register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor. The contractor acknowledges and agrees that (i) the County and the contractor may not enter into this Agreement, and the contractor may not enter into any subcontracts hereunder, unless each party to this Agreement, and each party to any subcontracts hereunder, registers with and uses the E-Verify system; and (ii) use of the U.S. Department of Homeland Security's E-Verify System and compliance with all other terms of this Certification and Section 448.095, Fla. Stat., is an express condition of this Agreement, and the County may treat a failure to comply as a material breach of this Agreement.
- C. By entering into this Agreement, the contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify 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 contractor shall maintain a copy of such affidavit for the duration of this Agreement. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. If this Agreement is terminated pursuant to Section 448.095, Fla. Stat., such termination is not a breach of contract and may not be considered as such. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If this Agreement is terminated for a violation of Section 448.095, Fla. Stat., by the contractor, the contractor may not be awarded a public contract for a period of 1 year after the date of termination. The contractor shall be liable for any additional costs incurred by the County as a result of the termination of this Agreement. Nothing in this Section shall be construed to allow intentional discrimination of any class protected by law.

13.20 **Construction Manager Representations** - The Construction Manager hereby represents and warrants the following to the County:

- 13.20.1 Construction Manager is a corporation that is duly organized and existing in good standing under the laws of the State of Florida with full right and authority to do business within the State of Florida;
- 13.20.2 Construction Manager's performance under this Agreement will not violate or breach any contract or agreement to which the Construction Manager is a party or is otherwise bound, and will not violate any governmental statute, ordinance, rule, or regulation;
- 13.20.3 Construction Manager has the full right and authority to enter into this Agreement and to perform its obligations in accordance with its terms;
- 13.20.4 Construction Manager now has and will continue to maintain all licenses and approvals required for conducting its business, and that it will at all times conduct its business activities in a reputable manner;
- 13.20.5 Construction Manager has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement;

- 13.20.6 Construction Manager has the personnel and experience necessary to perform all Services in a professional and workmanlike manner;
- 13.20.7 Construction Manager shall exercise the same degree of care, skill, and diligence in the performance of the Services as provided by a professional of like experience, knowledge and resources, under similar circumstances;
- 13.20.8 Construction Manager shall, at no additional cost to the County, re-perform those Services which fail to satisfy the foregoing standard of care or which otherwise fail to meet the requirements of this Agreement;
- 13.20.9 Each individual executing this Agreement on behalf of the Construction Manager is authorized to do so.

13.21 Waiver

A waiver by either County or Construction Manager of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach of this Agreement. The making or acceptance of a payment by either party with the knowledge of the other party's existing default or breach of the Agreement shall not waive such default or breach, or any subsequent default or breach of this Agreement, and shall not be construed as doing so.

13.22 Scrutinized Companies and Business Operations Certification; Termination.

A. Certification(s).

(i) By its execution of this Agreement, the Construction Manager hereby certifies to the County that the Construction Manager is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, nor is the Construction Manager engaged in a boycott of Israel, nor was the Construction Manager on such List or engaged in such a boycott at the time it submitted its bid, proposal, quote, or other form of offer, as applicable, to the County with respect to this Agreement.

(ii) Additionally, if the value of the goods or services acquired under this Agreement are greater than or equal to One Million Dollars (\$1,000,000), then the Construction Manager further certifies to the County as follows:

(a) the Construction Manager is not on the Scrutinized Companies with Activities in Sudan List, created pursuant to Section 215.473, Florida Statutes; and

(b) the Construction Manager is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; and

(c) the Construction Manager is not engaged in business operations (as that term is defined in Florida Statutes, Section 287.135) in Cuba or Syria; and

(d) the Construction Manager was not on any of the Lists referenced in this subsection A(ii), nor engaged in business operations in Cuba or Syria when it submitted its proposal to the County concerning the subject of this Agreement.

(iii) The Construction Manager hereby acknowledges that it is fully aware of the penalties that may be imposed upon the Construction Manager for submitting a false certification to the County regarding the foregoing matters.

B. Termination. In addition to any other termination rights stated herein, the County may immediately terminate this Agreement upon the occurrence of any of the following events:

(i) The Construction Manager is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection A(i) above, or the Construction

Manager is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

(ii) The Construction Manager is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection A(ii) above, or the Construction Manager is found to have been placed on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, and the value of the goods or services acquired under this Agreement are greater than or equal to One Million Dollars (\$1,000,000).

**13.23 Unauthorized Alien(s)**

The Consultant shall not employ or utilize unauthorized aliens in the performance of the Services provided pursuant to this Agreement. The County shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a) and a cause for the County's unilateral termination of this Agreement. When delivering executed counterparts of this Agreement to the County, the Consultant shall also deliver a completed and executed counterpart of the attached "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" form.

**ARTICLE 14**  
**DIRECT MATERIALS ACQUISITION AND SALES TAX EXEMPT PURCHASE PROCEDURES FOR**  
**PUBLIC PROJECTS**

**14.1 Direct Materials Acquisition by County - Supply Bonds:**

- 14.1.1 Each Subcontractor shall include Florida State Tax and other applicable Sales Taxes for all material, supplies and equipment included in the Subcontractor's bid.
- 14.1.2 The County may, if not prohibited by Law, exercise a right to purchase directly various construction materials, supplies and equipment that may be part of the Subcontract. Any materials purchased by the County shall be referred to as "County Purchased Materials" and the responsibilities of both the County and the Construction Manager relating to such County Purchased Materials shall be governed by the terms and conditions of the "Sales Tax Exempt Purchasing Procedures for Public Projects", which shall take precedence over other conditions and terms of this Agreement where inconsistencies or conflicts exist.
- 14.1.3 The County will issue its own Purchase Orders directly to the vendor. The County's Purchase Order shall contain or be accompanied by the County's Certificate of Entitlement and must include the County's name, address, and exemption number. The materials shall be purchased from the vendors and suppliers selected by the Construction Manager, for prices negotiated by the Construction Manager or Subcontractor. The Construction Manager will provide all the necessary information for preparation of the purchase orders by the County and will coordinate the purchase of the materials in a timely manner so as not to negatively impact on the performance of the construction activity of the project.
- 14.1.4 The Subcontract amount shall be reduced by the net, undiscounted amount of these purchase orders, plus all sales taxes. Issuance of the purchase orders by the County shall not relieve the Subcontractor or the Construction Manager of any of their responsibilities regarding material purchases, or installation, with the exception of the payments for the material so purchased. The Construction Manager and the Subcontractor shall remain, with respect to materials, supplies and equipment, fully responsible for coordination, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expediting, receiving, installation, cleaning, and the management of all applicable warranties.



- 14.1.5 Notwithstanding the transfer of County Purchased Materials by the County to the Subcontractor's possession, the County shall retain title to any and all County Purchased Materials.
- 14.1.6 The Contractor shall maintain products liability insurance, which shall include County Purchased Materials, as required for the normal practice of general contracting.
- 14.1.7 The material supplier may be required to provide a supply bond in the amount of 100% of the purchase order price. The bond shall be from a qualified surety company authorized to do business in the State of Florida and acceptable to the County and the Construction Manager. The premium cost for this supply bond shall be included in the sub-contractor's cost. Verifying that a designated material supplier can furnish a supply bond (if required) will be the responsibility of the Subcontractor. County reserves the right to waive the requirement of providing a supply bond at the discretion of County.
- 14.1.8 If the State of Florida assesses any Sales Tax penalties and/or interest against the Construction Manager or any of its Subcontractors or Material Suppliers relating to the direct acquisition of materials and/or equipment by County as authorized by this paragraph, such taxes, penalties, interest and/or any legal and administrative fees expended by the Construction Manager as a direct result of any action or assessment made by the State of Florida, shall be reimbursed by County to the Construction Manager in a prompt and reasonable manner and shall not be considered a Project Cost.

14.2 Sales Tax Exempt Purchasing Procedures for Public Projects:

- 14.2.1 The Subcontractor has included Florida State Sales and other applicable taxes in his bid for material, supplies and equipment. The County, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in the Subcontractor's bid and/or contract, substantially in accordance with the form of Purchase Order attached herewith.
- 14.2.2 Any equipment, materials or supplies directly purchased by the County that are included in the Subcontractor's contract shall be referred to as County Purchased Materials and the responsibilities of both the County/Public Entity and the Subcontractor relating to such County Purchased Materials shall be governed by the terms and conditions of these procedures.
- 14.2.3 Material suppliers shall be selected by the Subcontractor awarded the subcontract.
- 14.2.4 The Subcontractor has included the price for all construction materials plus applicable taxes in their bid. County purchasing of construction materials, if selected, will be administered on a deductive Change Order basis, the Subcontract amount shall be reduced by the net undiscounted amount of these Purchase Orders, plus all sales tax.
- 14.2.5 The Subcontractor shall provide the Construction Manager a list of all intended suppliers, vendors, and material men for consideration as County Purchased Materials. This list shall be submitted at the same time as the preliminary schedule of values and the Project schedule. The Subcontractor shall submit a description of the materials to be supplied, estimated quantities and prices.
- 14.2.6 Upon request from Construction Manager, and in a timely manner, the Subcontractor shall prepare a standard Purchase Order Requisition Form in a form acceptable to the County and the Construction Manager, to specifically identify the materials, which County has, at its sole option, elected to purchase directly. The Purchase Order Requisition Form shall include:
  - A. the name, address, telephone number and contact person for the material supplier
  - B. manufacturer or brand, model or specification number of the item

- C. quantity needed as estimated by Subcontractor
- D. the price quoted by the supplier for the materials identified therein, including freight
- E. any sales tax associated with such quote
- F. delivery dates as established by Subcontractor

- 14.2.7 Subcontractor shall include reference to any terms and conditions, which have been negotiated with the vendors; i.e., warranties, retainage, etc. The Purchase Order Requisition Forms are to be submitted to the County's designated representative no less than seven (7) days prior to the need for ordering such County Purchased Materials, in order to provide sufficient time for County review and approval and to assure that such Directly Purchased Materials may be directly purchased by County and delivered to the Project site without any delay to the Project.
- 14.2.8 After receipt of the Purchase Order Requisition Form, the County's Representative shall prepare Purchase Orders for equipment, materials or supplies which the County chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Subcontractor, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, Subcontractor shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. The County's Procurement Director or their designated representative shall be the approving authority for the County on Purchase Orders in conjunction with County Purchased Materials. The Purchase Order shall require that the supplier provide the required shipping and handling insurance. The Purchase Order shall also require the delivery of the County Purchased Materials on the delivery date provided by the Subcontractor in the Purchase Order Requisition Form and shall indicate F.O.B. jobsite. The County's Purchase Orders shall contain or be accompanied by the County's Certificate of Entitlement and must include the County's name, address, and exemption number.
- 14.2.9 In conjunction with the execution of the Purchase Orders by the suppliers, the Subcontractor shall execute and deliver to the County, through the Construction Manager, one or more deductive Change Orders, referencing the full value of all County-Purchased materials to be provided by each supplier from whom the County elected to purchase material directly, plus all sales tax savings associated with such materials in the Subcontractor's bid to the Construction Manager.
- 14.2.10 All shop drawings and submittals shall be made by the Subcontractor in accordance with the Project Specifications.
- 14.2.11 Subcontractor shall be fully responsible for all matters relating to the receipt of materials furnished by the County in accordance with these Procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials following acceptance of items by the County due to the negligence of the Subcontractor. The Subcontractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Subcontractor for the particular materials furnished. The Subcontractor shall provide all services required for the unloading, handling and storage of materials through installation. The Subcontractor agrees to indemnify and hold harmless the County from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of Subcontractor.
- 14.2.12 As County Purchased Materials are delivered to the jobsite, the Subcontractor and the Construction Manager, as County's Representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice for material delivered. The Subcontractor shall assure that each delivery of County Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order, together with such additional information as the County or Construction Manager may require. The

Construction Manager, as County's Representative, shall verify in writing to the County the accuracy of the delivery ticket. The Subcontractor will then forward the invoice to the County through the Construction Manager for payment. The invoice shall be thereupon furnished to the County for processing and payment in the manner as all other County invoices are processed. The County shall have the right to assign County personnel to verify and audit the accuracy of all County Purchased Material documents.

- 14.2.13 The Subcontractor shall ensure that County Purchased Materials conform to the Specifications and determine, prior to incorporation into the Work, if such materials are patently defective, whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Subcontractor discovers defective or nonconformities in the County Purchased Material upon such visual inspection, the Subcontractor shall not utilize such nonconforming or defective materials in the Work and instead shall promptly notify the Vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Subcontractor shall notify the County, through the Construction Manager, of such occurrence. If the Subcontractor fails to perform such inspection and otherwise incorporates County Purchased Materials, the condition of which it either knew or should have known by performance of an inspection, the Subcontractor shall be responsible for all damages to the County resulting from the Subcontractor's incorporation of such materials into the Project, including liquidated or delay damages. In the event that materials furnished are found to be defective, or nonconforming, the Subcontractor shall promptly take action to remedy the defect or nonconformance so as not to delay the work.
- 14.2.14 The Subcontractor shall maintain records of all County Purchased Materials it incorporates into the Work from the stock of County Purchased Materials in its possession. The Subcontractor shall account monthly to the County, through the Construction Manager, for any County Purchased Materials delivered into the Subcontractor's possession, including portions of all such materials, which have been incorporated into the Work.
- 14.2.15 The Subcontractor shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Contract Documents. All repairs, maintenance or damage repair calls shall be forwarded to the Subcontractor for resolution with the appropriate supplier or vendor.
- 14.2.16 Notwithstanding the transfer of County Purchased Materials by the County to the Subcontractor's possession, the County shall retain title to any and all County Purchased Materials.
- 14.2.17 The transfer of possession of County-Purchased Materials from the County to the Subcontractor shall constitute a bailment for mutual benefit of the County and the Subcontractor. The County shall be considered the bailor and the Subcontractor the bailee of the County Purchased Materials. County Purchased Materials shall be considered returned to the County for purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project. The Bailee shall have the duty to safeguard, store and protect all County Purchased Materials.
- 14.2.18 The County shall purchase and maintain insurance pursuant to the requirements set forth in the County and Construction Manager Agreement which shall be sufficient to protect against any loss of or damage to County Purchased equipment, materials or supplies. Such insurance shall cover the full value of any County Purchased Materials not yet incorporated into the Project from the time the County first takes title.
- 14.2.19 The County shall in no way be liable for interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from delay in the delivery of, or defects in, County Purchased Materials.

- 14.2.20 On a monthly basis, the Subcontractor shall be required to review invoices submitted by all suppliers of County Purchased Materials delivered to the Project site during that month and either concur or object to the County's issuance of payment to the suppliers, based upon the Subcontractor's records of materials delivered to the site and any defects in such materials.
- 14.2.21 In order to arrange for the prompt payment to the supplier, the Subcontractor shall provide to the County, through the Construction Manager, a list indicating the acceptance of the goods or materials in accordance with the established monthly Payment Request Schedule. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the County. Upon receipt and verification of the appropriate documentation, the County shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be released, delivered and remitted directly to the supplier. The Subcontractor agrees to assist the County to immediately obtain partial or final release of lien waivers as appropriate.
- 14.2.22 At the end of the Project, any refund for surplus materials returned to suppliers, plus applicable sales tax savings amount, shall be credited with an additive Change Order to the Subcontractor's agreement with the Construction Manager. Salvage materials shall be the property of the County and stored or removed from the site by the Subcontractor at the County's direction.

#### **ARTICLE 15**

#### **INCORPORATION OF EXHIBITS**

- 15.1 The following Exhibits, attached hereto, are hereby fully incorporated herein by this specific reference as if fully set forth in the body of this Agreement:

<b>Exhibit "A"</b>	-	<b>RFP 25-597 and Construction Manager's Proposal</b>
<b>Exhibit "B"</b>	-	<b>Pre-Construction Services Addendum</b>
<b>Exhibit "C"</b>	-	<b>GMP Addendum</b>
<b>Exhibit "D"</b>	-	<b>Certificate of Substantial Completion</b>
<b>Exhibit "E"</b>	-	<b>Release and Affidavit</b>
<b>Exhibit "F"</b>	-	<b>Application for Payment Form</b>
<b>Exhibit "G"</b>	-	<b>Final Payment Request Checklist / Certificate of Final Completion</b>
<b>Exhibit "H"</b>	-	<b>Change Order</b>
<b>Exhibit "I"</b>	-	<b>Allowance Authorization Release</b>
<b>Exhibit "J"</b>	-	<b>Schedule of Reimbursables</b>
<b>Exhibit "K"</b>	-	<b>Hourly Rate Schedule</b>
<b>Exhibit "L"</b>	-	<b>Affidavit Certification Immigration Laws</b>
<b>Exhibit "M"</b>	-	<b>Public Construction Bond</b>
<b>Exhibit "N"</b>	-	<b>Buy-Out Allowance Authorization Release</b>

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**POLK COUNTY, a political subdivision of the  
State of Florida**

ATTEST:

STACY M. BUTTERFIELD, Clerk

By: \_\_\_\_\_  
Deputy Clerk

Date Signed by Chair: \_\_\_\_\_

By: \_\_\_\_\_  
Martha Santiago, Ed.D., Chair  
Board of County Commissioners

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

*Nrah Mahan* 12/9/2020  
County Attorney's Office Date

ATTEST:

**Marcobay Construction, Inc.**  
a Florida profit corporation

By: *Sara McIntyre Scaynes*  
Sara McIntyre Scaynes  
Printed Name

By: *Jimmy Vessels*  
Print Name: Jimmy Vessels  
Title: president  
Date: 12/18/2025

## Affidavit Regarding the Use of Coercion for Labor or Services

In compliance with Section 787.06(13), Florida Statutes, this attestation must be completed by an officer or representative of a nongovernmental entity that is executing, renewing, or extending a contract with Polk County, a political subdivision of the State of Florida.

The undersigned, on behalf of the entity listed below (the "Nongovernmental Entity"), hereby attests under penalty of perjury as follows:

1. I am over the age of 18 and I have personal knowledge of the matters set forth herein.
2. I currently serve as an officer or representative of the Nongovernmental Entity.
3. The Nongovernmental Entity does **not** use coercion for labor or services, as those underlined terms are defined in Section 787.06, Florida Statutes.
4. This declaration is made pursuant to Section 92.525, Fla. Stat. and Section 787.06, Fla. Stat. I understand that making a false statement in this declaration may subject me to criminal penalties.

Under penalties of perjury, I Timmy Vessels (Signatory Name and Title), declare that I have read the foregoing Affidavit Regarding the Use of Coercion for Labor and Services and that the facts stated in it are true.

Further Affiant sayeth naught.

Marco bay Construction, Inc

NONGOVERNMENTAL AGENCY

SIGNATURE

Timmy Vessels

PRINT NAME

president

TITLE

12/18/2025

DATE



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/12/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Acentria Insurance 26 Lake Wire Drive Lakeland FL 33815	<b>CONTACT NAME:</b> Risk Management <b>PHONE (A/C, No, Ext):</b> 863-657-0304 <b>E-MAIL ADDRESS:</b> oms_riskmanagement@acentria.com	<b>FAX (A/C, No):</b>
<b>INSURED</b> Marcobay Construction, Inc. 3810 Dranefield Rd Ste. 16 Lakeland FL 33811	<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Bridgefield Employers Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	<b>NAIC #</b> 10701

License#: L100460  
MARCCON-01**COVERAGES****CERTIFICATE NUMBER:** 461409948**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG \$ \$ \$ \$ \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) \$ \$ \$ \$
	<b>UMBRELLA LIAB</b> <b>EXCESS LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE  DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE AGGREGATE \$ \$ \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	Y	830-11248	4/1/2025	4/1/2026	X PER STATUTE E.L. EACH ACCIDENT \$2,000,000 E.L. DISEASE - EA EMPLOYEE \$2,000,000 E.L. DISEASE - POLICY LIMIT \$2,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Project: RFP 25-597 CMAR-New Agricultural Center Complex project

The Workers Compensation policy includes a Waiver of Subrogation in favor of the Certificate Holder.

**CERTIFICATE HOLDER****CANCELLATION**Polk County Board of County Commissioners  
330 W Church Street  
Bartow FL 33831-9005

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

\*Blanket Waiver of Subrogation Applies\*

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Date Prepared: February 7, 2025

Carrier: Bridgefield Employers Insurance Company

Effective Date of Endorsement: April 1, 2025

Policy Number: 830-11248

Countersigned by: 

Insured: Marcobay Construction, Inc.

**WC 00 03 13** (Ed. 4-84)





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/12/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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<b>PRODUCER</b> The Baldwin Group Southeast LLC 1115 Bartow Rd Lakeland FL 33801	<b>CONTACT</b> NAME: Angel McGhee PHONE (A/C, No, Ext): 863-686-2113 E-MAIL ADDRESS: Angel.McGhee@Baldwin.com	<b>FAX</b> (A/C, No): 863-682-6292
License#: L002281 MARCCON-03		
<b>INSURED</b> Marcobay Construction, Inc. 3810 Drane Field Road Suite 16 Lakeland FL 33811	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
	<b>INSURER A:</b> Westfield Insurance Company	24112
	<b>INSURER B:</b> The Continental Insurance Comp	35289
	<b>INSURER C:</b> Travelers Property Casualty Co	25674
	<b>INSURER D:</b> Pacific Insurance Company	10046
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES****CERTIFICATE NUMBER:** 346064935**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$1,000 PD Ded GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	Y	CMM3680691	9/1/2025	9/1/2026	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> PIP	Y	Y	CMM3680691	9/1/2025	9/1/2026	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP \$10,000
B C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUE7034446503 EX-6S087257-25-NF	9/1/2025 9/1/2025	9/1/2026 9/1/2026	EACH OCCURRENCE \$25,000,000 AGGREGATE \$25,000,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A D	Rented or Leased Equipment Professional Liability Pollution Liability			CMM3680691 13CPIGD0280	9/1/2025 9/22/2025	9/1/2026 9/22/2026	\$350,000 Limit \$3,000,000 Limit \$1,000 Deductible \$25,000 Deductible

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Certificate Holder Polk County a Political Subdivision of the State of Florida, their affiliates and or assigns are included as Additional Insured with respect to General Liability including products and completed operations and Auto Liability on a primary and non contributory basis as required by written contract and subject to terms, conditions and exclusions of the policy. Waiver of subrogation applies to General Liability and Auto Liability. Umbrella follows form of General Liability, Auto Liability and Workers' Compensation.

**CERTIFICATE HOLDER****CANCELLATION**

Polk County Board of County Commissioners  
330 West Church Street  
Bartow FL 33831-9005

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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## Detail by Entity Name

Florida Profit Corporation

**MARCOBAY CONSTRUCTION, INC.**

### Filing Information

**Document Number** 447272  
**FEI/EIN Number** 59-1509590  
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**Status** ACTIVE  
**Last Event** NAME CHANGE AMENDMENT  
**Event Date Filed** 12/28/1995  
**Event Effective Date** NONE

### Principal Address

3700 DMG Drive  
LAKELAND, FL 33811

Changed: 07/28/2023

### Mailing Address

3700 DMG Drive  
LAKELAND, FL 33811

Changed: 07/28/2023

### Registered Agent Name & Address

Campbell, Timothy F, Esq.  
500 South Florida Avenue, Suite 800  
Lakeland, FL 33801

Name Changed: 08/26/2022

Address Changed: 08/26/2022

### Officer/Director Detail

#### **Name & Address**

Title President

**Vessels, Jimmy**

**3700 DMG Drive**  
**LAKELAND, FL 33811**

### Annual Reports

Report Year	Filed Date
2024	05/01/2024
2024	05/08/2024
2025	02/14/2025

### Document Images

[02/14/2025 -- ANNUAL REPORT](#) [View image in PDF format](#)

[05/08/2024 -- AMENDED ANNUAL REPORT](#) [View image in PDF format](#)

[05/01/2024 -- ANNUAL REPORT](#) [View image in PDF format](#)

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**EXHIBIT “A”**

**RFP 25-597 and Construction Manager’s Proposal**

*Construction Manager at Risk Services for New Agricultural Center  
Complex*

# EXHIBIT A1

## RFP REGISTRATION

**You MUST register using this form in order to receive notice of any addenda to these documents. Please fax the completed form to the Procurement Division as soon as possible. It is the vendor's responsibility to verify if addenda have been issued.**

**RFP Number and Title:** 25-597, Construction Manager at Risk – New Agricultural Center Complex

**Description:** Select a qualified Contractor to provide Construction Management at Risk (CMAR) services for the preconstruction and construction phase services of a new Agricultural (AG) Center complex.

**Receiving Period:** Prior to 2:00 p.m., Wednesday, August 27, 2025

**Bid Opening:** Wednesday, August 27, 2025, at 2:00 p.m. or as soon as possible thereafter.

This form is for RFP registration only. Please scroll down for additional information.

**Special Instructions:** A **MANDATORY** pre-proposal meeting will be held Thursday, August 7, 2025, 9:00 a.m. at the Polk County Administration building, located at 330 W. Church St, Procurement Conference Room, Room 150, Bartow, FL 33830. An authorized representative or agent of the Proposer must be present at this meeting in person or via conference call, as evidenced by their signature on the meeting's sign-in sheet, or the Proposer's Proposal will be considered non-responsive. Those attending via video conference will be added to the sign in sheet by the Procurement office during the video conference. The Zoom Meeting ID: 845 3187 8845.

Questions regarding this RFP must be in writing and must be sent to Tabatha Shirah, Procurement Analyst, via email at [tabathashirah@polk-county.com](mailto:tabathashirah@polk-county.com). All questions must be received by, **Wednesday, August 13, 2025, 4:00 p.m.**

**RFP REGISTRATION**

You must register using this form in order to receive notice of any addenda to these documents. Please fax the completed form to the Procurement Division as soon as possible. It is the vendor’s responsibility to verify if addenda have been issued.

RFP Number: 25-597

RFP Title: Construction Manager at Risk – New Agricultural Center Complex

This form is for bid registration only. Please scroll down for additional information.

Carefully complete this form and return it to the Procurement Division via e-mail to [procurement@polk-county.net](mailto:procurement@polk-county.net). You must submit one form for each solicitation that you are registering for.

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

## PROPOSAL SUBMITTAL INSTRUCTIONS

Proposers must submit their proposal prior to 2:00 p.m. on the receiving date. Proposals must be submitted in a “sealed” parcel or electronically through Polk County’s secure website, Kiteworks. Proposals will be publicly opened at 2:00 p.m. on the receiving date.

### **Sealed Parcel Submittal:**

If you are submitting a sealed parcel proposal submit one (1) original marked ORIGINAL and five (5) copies marked COPY of the proposal in a sealed parcel to the Procurement Division. The parcel should be labeled “RFP #25-597, Construction Manager at Risk – New Agricultural Center Complex” and marked with the proposer’s name and address. The Proposals may be mailed or delivered to:

**Polk County Procurement Division  
330 West Church Street, Room 150  
Bartow, FL 33830**

To assist with labeling the sealed parcel, please cut along the outer border and affix this label. Be sure to include the name of the company submitting the proposal where requested.

Sealed Proposal. DO NOT OPEN	
RFP Number	25-597
RFP Title	Construction Manager at Risk – New Agricultural Center Complex
Due Date/Time:	August 27, 2025, prior to 2:00 pm
Submitted by:	
Deliver To:	Polk County Procurement Division 330 West Church Street, Room 150, Bartow, Florida 33830

Proposals may be mailed, express mailed or hand delivered. It is the Proposers responsibility to ensure their package is delivered to the Procurement Division prior to 2:00 p.m. on the Receiving date and time referenced above. Proposals delivered at 2:00 p.m. or later will not be accepted.

***Electronic Proposals Submittal:***

All prospective Proposers that are interested in submitting their proposals electronically can do so via the County's secure electronic submittal website, Kiteworks. Proposers must email [tabathashirah@polk-county.net](mailto:tabathashirah@polk-county.net) at least 48 hours prior to opening to receive a link to upload their submittal. Please only upload your documents as a PDF or Excel file for the Cost Tab, if applicable. Please use the name convention of your files as follow:

"RFP 25-597 Tab 1"

"RFP 25-597 Tab 2"

"RFP 25-597 Tab 3"

"RFP 25-597 Tab 4"

"RFP 25-597 Tab 5"

"RFP 25-597 Tab 6"

"RFP 25-597 Tab 7"

"RFP 25-597 Tab 8"

"RFP 25-597 Submittal Documents"

For more instructions, a video tutorial has been produced to further explain the electronic solicitation submittal process. It can be found by clicking here for RFP Submittals: [https://youtu.be/vkn\\_7AHgioE](https://youtu.be/vkn_7AHgioE). If you need assistance accessing this website due to ADA or any other reason, please email Tabatha Shirah at [tabathashirah@polk-county.net](mailto:tabathashirah@polk-county.net).

Procurement recommends that Proposers submitting electronically double check the documents submitted into Kiteworks to ensure all requested tab information has been uploaded. Failure to upload the requested tab information may result in the proposal being deemed nonresponsive.

**POLK COUNTY**  
**Procurement Division**  
**Fran McAskill**  
**Procurement Director**  
**REQUEST FOR PROPOSAL 25-597**

**Construction Manager at Risk – New Agricultural Center Complex**

Sealed proposals will be received in the Procurement Division, **Wednesday, August 27, 2025, prior to 2:00 p.m.**

Attached are important instructions and specifications regarding responses to this Request for Proposal (the "RFP"). The failure of a responding proposer (a "Proposer") to follow these instructions could result in Proposer disqualification from consideration for a contract to be awarded pursuant to this RFP.

This document is issued by Polk County (the "County") which is the sole distributor of this RFP and all addenda and changes to the RFP documents. The County shall record its responses to inquiries and provide any supplemental instructions or additional documents pertaining to this RFP in the form of written addenda to the RFP. The County shall post all such addenda, together with any other information pertaining to this RFP, on the County's website at <https://www.polk-county.net/business/procurement/>. It is the sole responsibility of each Proposer to review the website prior to submitting a responsive proposal (a "Proposal") to this RFP to ensure that that the Proposer has obtained all available instructions, addenda, changes, supporting documents, and any other information pertaining to this RFP.

The County is not responsible for any solicitations issued through subscriber, publications, or other sources not connected with the County and the Proposer should not rely on such sources for information regarding the RFP solicitation.

Questions regarding this RFP must be in writing and must be sent to Tabatha Shirah, Procurement Analyst, via email at [tabathashirah@polk-county.net](mailto:tabathashirah@polk-county.net). All questions must be received by **Wednesday, August 13, 2025, 4:00 p.m.**

**Proposers and any prospective proposers shall not contact, communicate with or discuss any matter relating in any way to this RFP with any member of the Polk County Board of County Commissioners or any employee of Polk County other than the County Procurement Director or the individual designated above. This prohibition begins with the issuance of the Request for Proposal and ends upon execution of the final contract. Any such communication initiated by a Proposer or prospective proposer shall be grounds for disqualifying the offender from consideration for a contract to be awarded pursuant to this RFP and for contracts to be awarded pursuant to RFPs or Requests for Bid that the County may issue in the future.**

A Proposer's responsive Proposal to this RFP may be mailed, express mailed, or hand delivered to:

**Polk County Procurement Division**  
**330 West Church Street, Room 150**  
**Bartow, Florida 33830**



## **INTRODUCTION/BACKGROUND**

The intent of this Request for Proposal (RFP) is to select an experienced Contractor to provide Construction Management At Risk (CMAR) services for the preconstruction, including the preparation and submission of a guaranteed maximum price (GMP), and construction phase services for a new Polk County Agricultural Center Complex including all services required to construct a main arena, two stall barns, paddock area, restrooms, concession area, maintenance building, RV & trailer parking, site development, storm water systems, utility service construction and connections, accompanying access entrance drives, surface parking areas, landscaping and other structures as required for a fully functional Ag Center Complex.

Furthermore, the County has selected The Lunz Group for the design, preconstruction phase services (inclusive of bid/award), and construction phase.

It is the intent of the County to select and negotiate a CMAR agreement with one CMAR company as the prime contractor. The County will negotiate a fee schedule for the selected CMAR Company once an RFP selection committee recommendation has been approved by the Board of County Commissioners.

Polk County's Selection Process for Construction Manager at Risk (CMAR) services is in accordance with Section 287.055, Florida Statutes, the Consultants' Competitive Negotiations Act ("CCNA"). The Selection Committee will review the qualifications of all submitting firms.

All services must be performed in accordance with applicable Federal, State and Local regulations.

## **PURPOSE AND SCOPE**

The successful proposer shall utilize an open book approach to the project, resulting in a fixed cost and provide a GMP with full disclosure of actual costs to the county. Other responsibilities include value engineering, constructability reviews and recommendations; attend design and other applicable conferences, pre-bid meetings, pre-award meetings, and construction progress meetings. The successful company shall also provide administrative services, supervision and accepted accounting principles throughout the complete project.

The selection of the CMAR Contractor will be based upon criteria outlined herein under Evaluation of Proposals. Companies that are not experienced in providing CMAR services will not be considered for selection. The county's agreement with the selected Contractor will be a job specific contract for CMAR services. When the fee for pre-construction phase services is agreed to by the Facilities Division, a purchase order will be issued for the amount of the pre-construction phase fee. When the GMP is agreed to by the Facilities Management Division, an Agenda Item will be presented to the Board of County Commissioners for their approval. After GMP approval, a purchase order will be issued for the amount of the GMP.

The CMAR services will include, but are not limited to, the following work categories necessary to permit and construct the new Buildings:

- a. Attend and participate in all design progress/review meetings.
- b. Participate in all Buildings modeling reviews and reporting.
- c. Provide GMP estimating for schematic design (SD), design development (DD), and construction document (CD) level design documents.
- d. Provide constructability design reviews and reporting.
- e. Provide value engineering design reviews and reporting.
- f. Provide master project scheduling and reporting services
- g. Coordinate and conduct all pre-bid meetings.
- h. Provide competitive subcontracting bidding services.
- i. Schedule and coordinate all bid openings.
- j. Provide bid tabulation results and a GMP.
- k. Provide all Buildings permitting services.
- l. Provide all construction services.
- m. Provide demolition services(if applicable).
- n. Coordinate and attend all construction progress coordination meetings.
- o. Coordinate and participate in all closeout documentation requirements and meetings.
- p. Provide all warranty services.

The Estimated total cost for this project is \$21.2 million, with estimated construction at \$18.5 million.

It is anticipated that the design and permitting phase will take six (6) months and the construction phase will take twelve (12) to fourteen (14) months.

#### **QUALIFICATIONS**

1. Prime contractor must be a State of Florida Certified General Contractor (GC) and should provide proof of current general contractors' license(s) with their submittal.
2. Prime contractor must have been in business under the same name or EIN number for a minimum of 10 years.
3. Bidders must possess a Polk County Local Business Tax Receipt (f/k/a Business License) in order to do business with the County. A copy of such license must be provided to the Procurement Division before award is made to the successful bidders
4. Prime contractor must have CMAR experience.

#### **AGREEMENT**

The term of the resulting CMAR agreement will be negotiated as part of Elevation Level 4, contract negotiations.

## **SUBMITTAL**

Submittals should not contain information in excess of that requested, must be concise, and must specifically address the issues of this RFP. The responses should be in the same order as the selection and evaluation procedures. Proposals are to be printed double-sided. Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective submittal to this solicitation are not desired and may be construed as an indication of the proposer's lack of cost consciousness. Elaborate artwork, expensive visual aids, and other presentation aids are neither necessary nor desired, unless specifically requested. The proposal submittals should be contained within a three (3) ring binder (original and each copy in separate binders). Each submittal should contain:

### **Tab 1, Executive Summary:**

(Items a-e: Maximum two (2) pages)

- a) Name, company name, telephone number, and email address.
- b) State the number of years in business as the same company/firm.
- c) State the number of full time employees.
- d) Provide a copy of your current State of Florida General Contractors license.
- e) Describe and explain any litigation, major disputes, contract defaults, or liens experienced in the last ten (10) years.

### **Tab 2, Approach to the Project (30 Points)**

(Maximum three (3) pages)

- a) Define in detail the components of job specific pre-construction services and the responsibility of the Construction Manager for each component of this phase including budget estimating, value engineering, constructability recommendations and master project schedule.
- b) Detailed approach to the CM's competitive bidding for subcontracts, other cost of the work, general conditions cost summary, CM fee negotiations, GMP compilation, etc.
- c) Owner direct purchase and sales tax savings approach to the project.
- d) Approach to the management and construction of the project.
- e) CM's approach to quality workmanship and contract compliance control measures.

### **Tab 3, Experience and Expertise, Personnel & Technical Resources (25 Points)**

- I. Provide a minimum of three (3) and a maximum of five (5) similar CMAR projects performed for public entities which best illustrate the experience of the prime Contractor and current staff. (List no more than five (5) projects completed within the last ten (10) years.) (Maximum of one (1) page only per project). For each project please provide:
  - a) Name and location of the projects.
  - b) The nature of the Contractor's responsibility on the projects.

- c) Project Owner's representative name, address and phone number.
  - d) Date projects were completed or are anticipated to be completed.
  - e) Size of projects (gross S.F. and/or area of construction).
  - f) Cost of projects (construction cost).
  - g) List of change orders, including dollar amount, which were the result of unforeseen circumstances or design errors/oversights; and any time extensions created as a result of the change order
  - h) Work for which your staff was responsible (self performed).
  - i) Project manager, superintendent and other key professionals involved in the projects
- II. Provide an organizational chart of the firm's team highlighting the key individuals who will work on this project as identified above.
- III. Provide brief resumes of key personnel to be assigned to the project including but not limited to the items in the list below. (Maximum one (1) page per resume.) Identify project related capability of in-house staff and indicate the adequate depth and abilities of the organization that it can draw upon as needed. This will include management, technical, and support staff. (Indicate whether office or field related.)
- a) Name and current position held by the person.
  - b) Job assignment for other projects.
  - c) Percentage of time to be assigned full time to this project
  - d) How many years have they worked with this Contractor?
  - e) How many years have they worked with other Contractors?
  - f) Experience:
    - 1. Types of projects.
    - 2. Size of projects (dollar value of project).
    - 3. What were the specific project involvements?
  - g) List degrees, certifications, and registrations.

**Tab 4, Scheduling and Cost Control (20 Points)**

(Maximum three (3) pages plus the sample schedule)

The Contractor's scheduling system and cost control system should be described. Methods for assuring subcontractors adherence to schedule should be highlighted.

- a) Describe the Contractor's use of computer-generated schedules for the management of construction.
- b) Indicate the level of detail to define schedules. Describe methods for managing the processing of shop drawings. Define means and methods for managing and responding to requests for Information (RFI's) and Architect's Supplemental Instructions (ASI's).
- c) Indicate the Contractor's approach to project scheduling and coordination of subcontractors.



- d) Describe the Contractor's method for holding projects within budget. Provide one example.
- e) Attach a sample schedule that illustrates your overall scheduling capabilities.
- f) Attach sample of the cost control reports.
- g) Provide a written narrative regarding your approach to the project as it relates to cost control for items outside of the "cost of the work". Fees associated with this category are as follows; Preconstruction phase services, general conditions, CM fee and bond. Include fee percentages in your response as general information for a project of this size. Information regarding fee percentages are general in nature and are not considered as a final offer for a proposed contract.

**Tab 5, Is the Contractor a "Polk County Entity"? (5 Points)**

- If the Contractor is a Polk County Entity then five (5) points will be allocated for this tab
- Provide documentation of the Contractors' headquarters and local offices, if any, and the amount of time the Contractor has been located at each such local office. Please also indicate the number of employees at the local office.
- Proposers will be allocated points if they meet the following Polk County Government definition of Polk County Entity.
- The term "Polk County Entity" means any business having a physical location within the boundaries of Polk County, Florida, at which employees are located and business activity is managed and controlled on a day to day basis. Additionally, the business must have been located within the boundaries of Polk County for a minimum of 12 months prior to the date the applicable solicitation is issued. This requirement may be evidenced through a recorded deed, an executed lease agreement, or other form of written documentation acceptable to the County. The County shall have the right, but not the obligation, to verify the foregoing requirements.

**Tab 6, Is the Contractor a "Certified Woman or Minority Business Enterprise"? (5 Points)**

- Polk County Board of County Commissioners has a long standing commitment to encouraging the utilization of Women and Minority Businesses that do business with the County as vendors. To that end we encourage all of our Contractors to utilize W/MBE sub-contractors where at all possible, irrespective of a company's certification status.
- If the Contractor is a Woman or Minority owned business then five (5) points will be allocated for this tab.
- Proposers will be allocated points if they are a certified W/MBE as evidenced by providing the documentation described below.
- If the Proposer has a certified W/MBE status, provide documentation of the Contractors' certified W/MBE status as defined by the Florida Small and Minority

Business Act and as defined in Polk County's Purchasing Procedures. Polk County's Purchasing Procedures recognize the following to meet the requirement of a certified W/MBE status:

- Valid W/MBE Certification from one of the following:
  - Florida Minority Supplier Development Council
  - Women Business Enterprise National Council
  - The State of Florida Office of Supplier Diversity
  - Florida Department of Transportation
  - U. S. Small Business Administration
  - Federal Aviation Authority
  - Other Florida governmental agencies

Certifications from other governmental agencies will be considered on a case-by-case basis.

**Tab 7, Timely Completions of Projects (5 Points)**

- Describe the Contractors' current and future projected workload. Describe specifically the Contractors' daily ability to handle each aspect of the scope of services described herein. (Limit response to two (2) pages maximum)

**Tab 8, Surveys of Past Performance (10 Points)**

- Provide reference surveys from past clients for the projects identified under Tab 3.
- Completed surveys. (See Exhibit 1) Procurement will take the average of all surveys and score as follows:
  - Average Score between 9-10                      10 Points
  - Average Score between 7-8                      8 Points
  - Average Score between 5-6                      6 Points
  - Average Score between 3-4                      4 Points
  - Average Score between 1-2                      2 Points
  - Average Score of 0                                  0 Points

**EVALUATION CRITERIA AND SELECTION PROCESS**

Proposals will be evaluated in accordance with this section and all applicable County procurement policies and procedures.

The County shall appoint a selection committee (the "Selection Committee") that will be responsible for evaluating and scoring/ranking the Proposals in accordance with this Section.

The County will use a competitive selection process based on the Elevation Levels described in this Section. At Elevation Levels 2 and 3, the Selection Committee will score and/or rank the Proposals as applicable.

Selection of a final Proposal will be based upon the following steps and factors:

### **Elevation Level 1 (Procurement Requirements Assessment)**

- The County Procurement Division shall review all Proposals for conformance with RFP guidelines and detailed submittal requirements. At the County's discretion, non-conforming Proposals may be eliminated from further consideration and conforming Proposals shall be elevated to Elevation Level 2.
- Procurement will distribute Proposals and evaluation criteria to the Selection Committee.
- The Selection Committee may convene to review questions that arise during individual member review of submitted Proposals before Elevation Level 2 or Elevation Level 3, to allow for questions, clarifications, explanations, or other discussion to be held before the review of Proposals is completed.

### **Elevation Level 2 (Selection Committee Evaluation)**

Procurement shall score each Proposal on the following evaluation criteria:

• Local (Tab 5)	5 points
• W/MBE Certification (Tab 6)	5 Points
• Surveys of Past Performance (Tab 8)	10 points
Subtotal Points	20 Points

by the process stated under each corresponding Tab description

Each Selection Committee member shall score each Proposal on the following evaluation criteria:

• Approach to Project (Tab 2)	30 Points
• Experience and Expertise (Tab 3)	25 Points
Personnel and Technical Resources	
• Scheduling and Cost Control (Tab 4)	20 Points
• Timely Completion of Projects (Tab 7)	5 Points
Subtotal Points	80 Points

by the following process:

Each Selection Committee member shall determine which of the following descriptions applies to each of the foregoing evaluation criteria:

**EXCELLENT (1.0):** Of the highest or finest quality; exceptional; superior; superb; exquisite; peerless.

The Proposer provided information for a given criteria that satisfied the requirements and described specifically how and what will be accomplished in such a manner that exhibited an exceptional and superior degree of understanding, skill, and competency, both qualitatively and quantitatively. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer's ability to perform and deliver far beyond expectation.

**VERY GOOD (0.8):** To a high degree; better than or above competent and/or skillful.

The Proposer provided information for a given criteria that satisfied the requirements and described specifically how and what will be accomplished in such a manner that exhibited a very high degree of understanding, skill, and competency, both qualitatively and quantitatively. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer's ability to perform and deliver beyond expectation.

**GOOD (0.6):** Having positive or desirable qualities; competent; skilled; above average.

The Proposer provided information for a given criteria that satisfied the requirements and described specifically how and what will be accomplished in such a manner that exhibited a skillful and above-average degree of understanding, skill, and competency, both qualitatively and quantitatively. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer's ability to perform and deliver at the expected level.

**FAIR (0.4):** Average; moderate; mediocre; adequate; sufficient; satisfactory; standard.

The Proposer provided information for a given criteria that satisfied the requirements and described sufficiently how and what will be accomplished in a manner that exhibited an adequate and average degree of understanding, skill, and competency, both qualitatively and quantitatively. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer's ability to perform and deliver at a level slightly below expectation.

**POOR (0.2):** Inadequate; lacking; inferior in quality; of little or less merit; substandard; marginal.

The Proposer provided information for a given criteria that did not satisfy the requirements and described in an inadequate manner how and what will be accomplished. The information provided simply reiterated a requirement, contained inaccurate statements or references, lacked adequate information, or was of inferior quality. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer's ability to perform and deliver at a substandard and inferior level.

**UNACCEPTABLE (0.0):**

The Proposer failed to provide any information for a given criteria, provided information that could not be understood, or did not provide the information for a given category as requested.

After a Selection Committee member has determined the description applicable for each evaluation criterion, the total points available for such criterion shall be multiplied by the factor associated with the applicable description to produce the number of points



allocated for that evaluation criterion. For example, a Selection Committee member classifies the "Experience and Expertise" criterion (which shall be worth 25 points for the purpose of this example) as "Very Good" (which is a description factor multiplier of 0.8). The points that Selection Committee member allocated for that evaluation criterion would be 20, calculated as follows: 25 available points x 0.8 applicable description factor multiplier = 20 points.

A Selection Committee member's total score for each Proposal shall equal the sum of the total points allocated for each evaluation criteria.

When all Selection Committee members have completed their proposal evaluations, the individual Selection Committee member's total scores for each Proposal will be added together to produce a final score for each Proposal.

Procurement will confirm the calculations for the final score for each Proposal. Then, Procurement shall publish a rank-ordered listing of the Proposals to the Selection Committee with the Proposal receiving the highest point as the highest-ranked Proposal.

In accordance with Section 287.055(4)(a), Florida Statutes, if there are three (3) or more Proposers in Elevation Level 2, the Selection Committee must elevate no fewer than the three highest scored of such Proposers to Elevation Level 3 for interviews. If there are only two Proposers in Elevation Level 2, the Selection Committee must elevate those two Proposers to Elevation Level 3 for interviews. If there is only one Proposer in Elevation Level 2, then the Selection Committee may collectively decide if they would like to elevate the Proposer to Elevation Level 3 for interviews or if they would like to recommend the Board authorize staff to enter into Contract Negotiations with the Proposer. In the latter case, after Board approval to authorize staff to negotiate a contract, the Proposer will then be elevated to Elevation Level 4 for contract negotiations.

### **Elevation Level 3 (Proposer Interviews)**

The Selection Committee are required to conduct interviews of the Proposers that it has elevated from Elevation Level 2 to Elevation Level 3.

During an interview, elevated Proposers may be requested to make a presentation focusing on their qualifications, approach to the project and the ability to furnish the required services. The Selection Committee members will have an opportunity to inquire about any aspect of the RFP and the Proposer's Proposal. After all elevated Proposer interviews, each Selection Committee member will individually rank the Proposers in numerical order beginning at number 1 for the Proposer deemed to be the most highly qualified to perform the required services. In accordance with Section 287.055(4)(b), Florida Statutes, in determining whether a Proposer is qualified, each Selection Committee member shall consider such factors as:

- Ability of Personnel

- Whether a Proposer is a certified minority business enterprise
- Past performance
- Willingness to meet time and budget requirements
- Location
- Recent, current, and projected workloads
- Volume of work previously awarded to each Proposer by the County

Procurement shall receive and compile each Selection Committee member's ranking of each Proposer, and then publish a rank-ordered listing of Proposers to the Selection Committee, based on the combined average rankings given each Proposer. The Selection Committee members will then collectively decide if they would like to recommend the Board, or if applicable the County manager, authorize staff to enter into Contract Negotiations with all Proposers elevated to Proposer Interviews, starting with the highest-ranked Proposer. After Board or County Manager approval, as applicable, to authorize staff to negotiate a contract, the highest-ranked Proposer will then be elevated to Elevation Level 4, Contract Negotiations.

#### **Elevation Level 4 (Contract Negotiations)**

If after negotiating for a reasonable time period the parties cannot agree on a contract, the County shall, in its sole discretion, terminate further contract negotiations with that Proposer. Procurement shall notify the Selection Committee that contract negotiations with the elevated Proposer have terminated. The Selection Committee shall then determine whether to recommend to the Board to approve contract negotiations with the next-highest-ranked Proposer, and so on. If the Selection Committee decides not to recommend contract negotiations with the next-highest-ranked Proposer, or if the County determines there is no other Proposer with whom the County can successfully negotiate a contract, then the RFP Selection Process shall terminate.

After contract negotiations with a Proposer are successfully completed pursuant to Elevation Level 4, the Selection Committee shall recommend to the Board of County Commissioners that it selects such Proposer to provide the services as outlined in the Agreement. The Board of County Commissioners shall make the final decision whether to enter into an Agreement with a Proposer.

## **GENERAL CONDITIONS**

### **BID OPENING**

Proposers may attend the Bid Opening in person or via conference call by dialing (646) 558-8656 and enter Meeting ID: 327 647 2818. A listing of all proposers will be posted to Procurement's website as soon as possible after bid opening.

### **COMMUNICATIONS**

After the issuance of any Request for Proposal, prospective proposers shall not contact, communicate with or discuss any matter relating in any way to the Request for Proposal with the Board of County Commissioners, the County Manager, or any employee of Polk County other than the Procurement Director or as directed in the cover page of the Request for Proposal. This prohibition begins with the issuance of any Request for Proposal and ends upon execution of the final contract. Such communications initiated by a proposer shall be grounds for disqualifying the offending proposer from consideration for award of the proposal and/or any future proposal.

### **INSURANCE REQUIREMENTS**

Vendor shall maintain at all times the following minimum levels of insurance and shall, without in any way altering its liability, obtain, pay for, and maintain insurance for the coverage and amounts of coverage not less than those set forth below. All insurance shall be written with an insurer licensed to do business in the State of Florida; rated "A VIII" or better by A.M. Best Rating Company for Class VIII financial size category.

Commercial General Liability Insurance: \$1,000,000 combined single limit of liability for bodily injury, death, property damage, and personal injury resulting from any one occurrence, including the following coverages: Completed Operations, Broad Form CG. Policy shall include coverage for all contractual liability that Vendor has agreed to herein and may not contain any endorsement(s) excluding nor limiting Products/Completed Operations, Contractual Liability or Cross Liability coverage. Policy shall include the following sublimits:

Products Completed Operations: \$1,000,000 / \$2,000,000

Personal and Advertising Injury: \$1,000,000

Medical Expenses: \$10,000

Comprehensive Automobile Liability Insurance: \$1,000,000 combined single limit of liability for bodily injury, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles and shall be primary to any other available insurance.

Workers' Compensation Insurance: Vendor shall maintain Workers' Compensation statutory benefits coverage for all employees, agents, volunteers, and subcontractors as required under Florida Statutes, including those that may be required by any applicable federal statute.

Employers Liability Insurance: Vendor shall maintain the following limits:

Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

Professional Services Errors and Omissions Liability Insurance: \$2,000,000 combined single limit of liability, to include, but not limited to, design and engineering, as applicable.

The County shall be named as an additional insured for all work being performed for Polk County for General Liability and Automobile Liability. For General Liability, Additional Insured status must apply to both ongoing and completed operations. General Liability should be on a primary and non-contributory basis. All policies shall contain a waiver of subrogation in favor of the County. Limits of liability may be obtained using any combination of primary and excess policies, with all excess policies following form of the underlying primary policy.

The certificate holder must be Polk County, a political subdivision of the State of Florida, 330 W Church St, Rm 150, Bartow, Florida 33830. An original certificate of insurance must be on file in the Procurement Division before a purchase order will be issued. The County shall receive 30 days advance notice of non-renewal, cancellation or material change to any policy under this agreement.

## **INDEMNIFICATION**

Contractor, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to County), protect and hold the County, and its officers, employees and agents, harmless from and against any and all, claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses, and expenses whatsoever (including, without limitation, attorneys' fees, costs, and expenses incurred during negotiation, through litigation and all appeals therefrom) including, without limitation, those pertaining to the death of or injury to any person, or damage to any property, arising out of or resulting from (i) the failure of Contractor to comply with applicable laws, rules or regulations, (ii) the breach by Contractor of its obligations under any Agreement with the County entered into pursuant to this solicitation, (iii) any claim for trademark, patent, or copyright infringement arising out of the scope of Contractor's performance or nonperformance of the Agreement, or (iv) the negligent acts, errors or omissions, or intentional or willful misconduct, of Contractor, its professional associates, subcontractors, agents, and employees; provided, however, that Contractor shall not be obligated to defend or indemnify the County with respect to any such claims or damages arising out of the County's sole negligence. The obligations imposed by this Section shall survive the expiration or earlier termination of the Agreement.



**PUBLIC ENTITY CRIMES STATEMENT**

The Contractor declares and warrants that neither the Contractor nor any of the Contractor's affiliates, as that term is defined in Section 287.133, Florida Statutes, are subject to the restrictions in Section 287.133, Florida Statutes, regarding the commission of a public entity crime. If during the term of this Agreement, the Contractor or any affiliate is convicted of a public entity crime or is otherwise prohibited from performing work for or transacting business with the County pursuant to Section 287.133, Florida Statutes, then the Contractor shall be in material default of this Agreement, and in such case, the County shall have the rights and remedies as provided herein.

**EQUAL OPPORTUNITY/AFFIRMATIVE ACTION**

The County is an equal opportunity/affirmative action employer. The County is committed to equal opportunity employment effort; and expects Contractors that do business with the County to have a vigorous affirmative action program.

**WOMEN/MINORITY BUSINESS ENTERPRISE OUTREACH**

The County hereby notifies all Proposers that W/MBE's are to be afforded a full opportunity to participate in any request for proposal by the County and will not be subject to discrimination on the basis of race, color, sex or national origin.

**AFFIRMATION**

By submitting their proposal, the Proposer affirms that the proposal is genuine and not made in the interest of or on behalf of any undisclosed person, Contractor or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; the Proposer has not directly or indirectly induced or solicited any other person to submit a false or sham proposal; the Proposer has not solicited or induced any person, Contractor or corporation to refrain from submitting a proposal; and the Proposer has not sought by collusion to obtain for him/herself any advantage over other persons or over the County.

**DEVELOPMENT COSTS**

Neither the County nor its representative(s) shall be liable for any expenses incurred in connection with preparation of a submittal to the RFP. Proposers should prepare their proposals simply and economically, providing a straightforward and concise description of the proposer's ability to meet the requirements of the RFP.

**ADDENDA**

The County may record its responses to inquiries and any supplemental instructions in the form of written addenda. The addenda will be posted on the County's website at <https://www.polk-county.net/business/procurement/>. It is the sole responsibility of the proposers to check the website to ensure that all available information has been received prior to submitting a proposal.

### **CODE OF ETHICS**

If any proposer violates or is a party to a violation of the code of ethics of Polk County or the State of Florida, with respect to this proposal, such proposer may be disqualified from performing the work described in this proposal or from furnishing the goods or services for which the proposal is submitted and shall be further disqualified from bidding on any future proposals for work, goods, or services for the County.

### **DRUG FREE WORKPLACE**

Preference shall be given to businesses with Drug Free Workplace (DFW) programs. Whenever two or more proposals, which are equal with respect to price, quality and service, are received by the County for the procurement of commodities or contractual services, a proposal received from a business that has provided a statement that it is a DFW shall be given preference in the award process.

### **APPLICABLE LAWS AND COURTS**

This RFP and any resulting agreements shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Polk County, State of Florida or the Middle District of Florida, Hillsborough County, Florida. The proposer shall comply with all applicable federal, state and local laws and regulations.

### **CONTRACT**

All contracts are subject to final approval of the Polk County Board of County Commissioners or County Manager, as applicable. Persons or Contractors which incur expenses or change position in anticipation of a contract prior to the Board's approval do so at their own risk.

### **PROPOSAL ACCEPTANCE PERIOD**

A proposal shall be binding upon the offeror and irrevocable by it for 120 calendar days following the proposal opening date. Any proposal in which offer or shortens the acceptance period may be rejected.

### **ADDITION/DELETION**

The County reserves the right to add to or delete any item from this proposal or resulting agreements when deemed to be in the best interest of the County.

**INVOICING AND PAYMENT:** The successful proposer shall submit a properly certified invoice to the County at the contract prices. **An original invoice shall be submitted to the appropriate User Division.** The proposer shall include the contract number and/or the purchase order number on all invoices. The proposer's Project Manager or any authorized officer shall, by affidavit, attest to the correctness and accuracy of all charges. Invoices will be processed for payment when approved by the appropriate Division's Project Manager or designee. The County's payment of an invoice shall not constitute evidence of the County's acceptance of the Proposers performance of the Service or the County's acceptance of any work.

### **PROPRIETARY INFORMATION**

In accordance with Chapter 119 of the Florida Statutes (Public Records Law) and except as may be provided by other applicable State and Federal Law, all proposers should be aware that Request for Proposals and the submittals thereto are in the public domain. However, the proposers are **required to identify specifically** any information contained in their proposals which they consider confidential and/or proprietary and which they believe to be exempt from disclosure, **citing specifically the applicable exempting law**. Proposers should provide a redacted copy of proposal with submittal.

All proposals received from proposers in response to this Request for Proposal will become the property of the County and will not be returned to the proposers. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of the County.

### **REVIEW OF PROPOSAL FILES**

In accordance with Chapter 119.071 of the Florida Statutes, the submittals received for this Request for Proposal are exempt from review for thirty (30) days after the Bid Opening Date or at Recommendation of Award, whichever event occurs first.

Should the RFP be cancelled and re-solicited for any reason, proposal submittals shall remain exempt from disclosure for a period not to exceed twelve (12) months or at Recommendation of Award of the subsequent solicitation.

**RFP PROTEST:** Any proposer desiring to file a protest, with respect to a recommended award of any RFP, shall do so by filing a written protest. The written protest must be in the possession of the Procurement Division within three (3) working days of the Notice of Recommended Award mailing date. All proposers who submitted a proposal will be sent a Notice of Recommended Award, unless only one proposal was received.

A copy of the protest procedures may be obtained from the Polk County Procurement Division or can be downloaded from the County's website at <https://www.polk-county.net/business/procurement/protest-procedures/>.

**FAILURE TO FOLLOW PROTEST PROCEDURE REQUIREMENTS WITHIN THE TIME FRAMES PRESCRIBED HEREIN AS ESTABLISHED BY POLK COUNTY, FLORIDA, SHALL CONSTITUTE A WAIVER OF THE PROPOSER'S RIGHT TO PROTEST AND ANY RESULTING CLAIM.**

### **UNAUTHORIZED ALIEN(S)**

The vendor agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The County shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the County. As part of the response to this solicitation, the successful Contractor will complete and submit the attached form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS."

## **EMPLOYMENT ELIGIBILITY VERIFICATION (E-Verify)**

A. Unless otherwise defined herein, terms used in this Section which are defined in Section 448.095, Florida Statutes, as may be amended from time to time, shall have the meaning ascribed in said statute.

B. Pursuant to Section 448.095(5), Florida Statutes, the contractor hereto, and any subcontractor thereof, must register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor. The contractor acknowledges and agrees that (i) the County and the contractor may not enter into this Agreement, and the contractor may not enter into any subcontracts hereunder, unless each party to this Agreement, and each party to any subcontracts hereunder, registers with and uses the E-Verify system; and (ii) use of the U.S. Department of Homeland Security's E-Verify System and compliance with all other terms of this Certification and Section 448.095, Fla. Stat., is an express condition of this Agreement, and the County may treat a failure to comply as a material breach of this Agreement.

C. By entering into this Agreement, the contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify 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 contractor shall maintain a copy of such affidavit for the duration of this Agreement. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. If this Agreement is terminated pursuant to Section 448.095, Fla. Stat., such termination is not a breach of contract and may not be considered as such. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If this Agreement is terminated for a violation of Section 448.095, Fla. Stat., by the contractor, the contractor may not be awarded a public contract for a period of 1 year after the date of termination. The contractor shall be liable for any additional costs incurred by the County as a result of the termination of this Agreement. Nothing in this Section shall be construed to allow intentional discrimination of any class protected by law.

## **LIMITATIONS**

The County reserves the right to revise, amend or withdraw this proposal at any time to protect its interest. Proposers will not be compensated by the County for costs incurred in preparation of responses to this RFP.

**ATTORNEY'S FEES AND COSTS:** Each party shall be responsible for its own legal and attorney's fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Agreement, including attorney's fees, costs and expenses incurred for any appellate or bankruptcy proceedings.

**Prohibition Against Considering Vendor Interests:** In accordance with Section 287.05701, Florida Statutes, the County may not (i) request documentation of or consider a Vendor's social, political, or ideological interests when determining if the



Vendor is a responsible vendor; or (ii) give preference to a Vendor based on the Vendor's social, political, or ideological interests

#### **PUBLIC RECORD LAWS**

- a) The Contractor acknowledges the County's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and comply in the handling of the materials created under this Agreement. The Contractor further acknowledges that the constitutional and statutory provisions control over the terms of this Agreement. In association with its performance pursuant to this Agreement, the Contractor shall not release or otherwise disclose the content of any documents or information that is specifically exempt from disclosure pursuant to all applicable laws.
- b) Without in any manner limiting the generality of the foregoing, to the extent applicable, the Contractor acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:
  - 1. keep and maintain public records required by the County to perform the services required under this Agreement;
  - 2. upon request from the County's Custodian of Public Records or his/her designee, provide the County 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 in Chapter 119, Florida Statutes, or as otherwise provided by law;
  - 3. ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if the Contractor does not transfer the records to the County; and
  - 4. upon completion of this Agreement, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County.
- c) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**RECORDS MANAGEMENT LIAISON OFFICER  
POLK COUNTY  
330 WEST CHURCH ST.  
BARTOW, FL 33830  
TELEPHONE: (863) 534-7527  
EMAIL: RMLO@POLK-COUNTY.NET**

**Scrutinized Companies and Business Operations Certification; Termination.**

**A. Certification(s).**

- i. By its execution of this Agreement, the Vendor hereby certifies to the County that the Vendor is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, nor is the Vendor engaged in a boycott of Israel, nor was the Vendor on such List or engaged in such a boycott at the time it submitted its bid, proposal, quote, or other form of offer, as applicable, to the County with respect to this Agreement.
- ii. Additionally, if the value of the goods or services acquired under this Agreement are greater than or equal to One Million Dollars (\$1,000,000), then the Vendor further certifies to the County as follows:
  - a) the Vendor is not on the Scrutinized Companies with Activities in Sudan List, created pursuant to Section 215.473, Florida Statutes; and
  - b) the Vendor is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; and
  - c) the Vendor is not engaged in business operations (as that term is defined in Florida Statutes, Section 287.135) in Cuba or Syria; and
  - d) the Vendor was not on any of the Lists referenced in this subsection A(ii), nor engaged in business operations in Cuba or Syria when it submitted its proposal to the County concerning the subject of this Agreement.
- iii. The Vendor hereby acknowledges that it is fully aware of the penalties that may be imposed upon the Vendor for submitting a false certification to the County regarding the foregoing matters.

**B. Termination.** In addition to any other termination rights stated herein, the County may immediately terminate this Agreement upon the occurrence of any of the following events:

- i. The Vendor is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection A (i) above, or the Vendor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.
- ii. The Vendor is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection A(ii) above, or the

Vendor is found to have been placed on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, and the value of the goods or services acquired under this Agreement are greater than or equal to One Million Dollars (\$1,000,000).

## Proposers Incorporation Information

(Submittal Page)

The following section should be completed by all bidders and submitted with their bid submittal:

Company Name: \_\_\_\_\_

DBA/Fictitious Name (if applicable): \_\_\_\_\_

TIN #: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

County: \_\_\_\_\_

Note: Company name must match legal name assigned to the TIN number. A current W9 should be submitted with your bid submittal.

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Cell Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Type of Organization (select one type)

- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Non-Profit
- ☐ Sub Chapter
- ☐ Joint Venture
- ☐ Corporation
- ☐ LLC
- ☐ LLP
- ☐ Publicly Traded
- ☐ Employee Owned

State of Incorporation: \_\_\_\_\_

The Successful vendor must complete and submit this form prior to award. The Successful vendor must invoice using the company name listed above.

## EXHIBIT 1

### DETAILED INSTRUCTIONS ON HOW TO PREPARE AND SEND PERFORMANCE SURVEYS

The objective of this process is to identify the past performance of the Contractor submitting a proposal package. This is accomplished by sending survey forms to past customers. The customers should return the forms directly to the Contractor. The Contractor is to include all surveys in their proposal package.

#### **Sending the Survey**

The surveys shall be sent to all clients for whom the Contractor has identified under Tab 3. Surveys should correlate to all projects identified under Tab 3.

If more surveys are included, then Procurement will only use those identified under Tab 3.

1. The Contractor shall complete the following information for each customer that a survey will be sent

CLIENT NAME	Name of the company that the work was performed for (i.e. Hillsborough County).
FIRST NAME	First name of the person who will answer customer satisfaction questions.
LAST NAME	Last name of the person who will answer customer satisfaction questions.
PHONE NUMBER	Current phone number for the reference (including area code).
EMAIL ADDRESS	Current email address for the reference.
PROJECT NAME	Name of the project (CMAR Services for Hillsborough County Ag Center), Etc.
COST OF SERVICES	Cost of services (\$1,000,000)
DATE COMPLETE	Date when the services were completed. (i.e. 5/31/2022)

2. The Contractor is responsible for verifying that their information is accurate prior to submission for references.

3. The survey must contain different services/projects. You cannot have multiple people evaluating the same job. However, one person may evaluate several different jobs.

4. The past projects can be either completed or on-going.

5. The past client/owner must evaluate and complete the survey.

## **Preparing the Surveys**

1. The Contractor is responsible for sending out a performance survey to the clients that have been identified under Tab 3. The survey can be found on the next page.
2. The Contractor should enter the past clients' contact information, and project information on each survey form for each reference. The Contractor should also enter their name as the Contractor being surveyed.
3. The Contractor is responsible for ensuring all references/surveys are included in their submittal under Tab 8
4. Polk County Procurement may contact the reference for additional information or to clarify survey data. If the reference cannot be contacted, there will be no credit given for that reference.

### Survey Questionnaire – Polk County

#### RFP 25-597, Construction Manager at Risk – New Agricultural Center Complex

To: \_\_\_\_\_ (Name of Person completing survey)

\_\_\_\_\_ (Name of Client Company/Contractor)

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Total Annual Budget of Entity \_\_\_\_\_

Subject: Past Performance Survey of Similar work:

Project name: \_\_\_\_\_

Name of Vendor being surveyed: \_\_\_\_\_

Cost of Services: Original Cost: \_\_\_\_\_ Ending Cost: \_\_\_\_\_

Contract Start Date: \_\_\_\_\_ Contract End Date: \_\_\_\_\_

**Rate each of the criteria on a scale of 1 to 10, with 10 representing that you were very satisfied (and would hire the Contractor /individual again) and 1 representing that you were very unsatisfied (and would never hire the Contractor /individual again). Please rate each of the criteria to the best of your knowledge. If you do not have sufficient knowledge of past performance in a particular area, leave it blank.**

NO	CRITERIA	UNIT	SCORE
1	Ability to manage cost	(1-10)	
2	Ability to maintain project schedule (complete on-time/early)	(1-10)	
3	Quality of workmanship	(1-10)	
4	Professionalism and ability to manage	(1-10)	
5	Close out process	(1-10)	
6	Ability to communicate with Client's staff	(1-10)	
7	Ability to resolve issues promptly	(1-10)	
8	Ability to follow protocol	(1-10)	
9	Ability to maintain proper documentation	(1-10)	
10	Appropriate application of technology	(1-10)	
11	Overall Client satisfaction and comfort level in hiring	(1-10)	
12	Ability to offer solid recommendations	(1-10)	
13	Ability to facilitate consensus and commitment to the plan of action among staff	(1-10)	

Printed Name of Evaluator \_\_\_\_\_

Signature of Evaluator: \_\_\_\_\_

Please fax or email the completed survey to: \_\_\_\_\_



**Affidavit Certification Immigration Laws**

POLK COUNTY WILL NOT INTENTIONALLY AWARD COUNTY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 A(E) {SECTION 274A(E) OF THE IMMIGRATION AND NATIONALITY ACT ("INA")}.

POLK COUNTY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(E) OF THE INA. **SUCH VIOLATION OF THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN 274A(E) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY POLK COUNTY.**

BIDDER ATTEST THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

State of: \_\_\_\_\_

County of: \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (name) as \_\_\_\_\_ (title of officer) of \_\_\_\_\_ (entity name), on behalf of the company, who ☐ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.

Notary Public Signature: \_\_\_\_\_

Printed Name of Notary Public: \_\_\_\_\_

Notary Commission Number and Expiration: \_\_\_\_\_

(AFFIX NOTARY SEAL)



**EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY) CERTIFICATION**

(Florida Statutes, Section 448.095)

**PROJECT NAME:** RFP 25-597, Construction Manager at Risk – New Agricultural Center Complex

The undersigned, as an authorized officer of the contractor identified below (the "**Contractor**"), having full knowledge of the statements contained herein, hereby certifies to Polk County, a political subdivision of the State of Florida (the "**County**"), by and on behalf of the Contractor in accordance with the requirements of Section 448.095, Florida Statutes, as related to the contract entered into by and between the Contractor and the County on or about the date hereof, whereby the Contractor will provide labor, supplies, or services to the County in exchange for salary, wages, or other remuneration (the "**Contract**"), as follows:

1. Unless otherwise defined herein, terms used in this Certification which are defined in Section 448.095, Florida Statutes, as may be amended from time to time, shall have the meaning ascribed in said statute.

2. Pursuant to Section 448.095(5), Florida Statutes, the Contractor, and any subcontractor under the Contract, must register with and use the E-Verify system to verify the work authorization status of all new employees of the Contractor or subcontractor. The Contractor acknowledges and agrees that (i) the County and the Contractor may not enter into the Contract, and the Contractor may not enter into any subcontracts thereunder, unless each party to the Contract, and each party to any subcontracts thereunder, registers with and uses the E-Verify system; and (ii) use of the U.S. Department of Homeland Security's E-Verify System and compliance with all other terms of this Certification and Section 448.095, Fla. Stat., is an express condition of the Contract, and the County may treat a failure to comply as a material breach of the Contract.

3. By entering into the Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify 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 Contractor shall maintain a copy of such affidavit for the duration of the Contract. Failure to comply will lead to termination of the Contract, or if a subcontractor knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. If the Contract is terminated pursuant to Section 448.095, Fla. Stat., such termination is not a breach of contract and may not be considered as such. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If the Contract is terminated for a violation of Section 448.095, Fla. Stat., by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination. The Contractor shall be liable for any additional costs incurred by the County as a result of the termination of the Contract. Nothing in this Certification shall be construed to allow intentional discrimination of any class protected by law.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ATTEST:**

By: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

Its: \_\_\_\_\_

**CONTRACTOR:**

By: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

Its: \_\_\_\_\_

August 12, 2025

**POLK COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA**

**ADDENDUM #1**

**RFP 25-597, Construction Manager at Risk (CMAR) – New Agricultural Center Complex**

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This addendum is issued to clarify, add to, revise and/or delete items of the RFP Documents for this work. This Addendum is a part of the RFP Documents and acknowledgment of its receipt should be noted on the Addendum.

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Contained within this addendum: Questions and answers.

*Tabatha Shirah*

Tabatha Shirah

Procurement Analyst

Procurement Division

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**This Addendum sheet should be signed and returned with your submittal. This is the only acknowledgment required.**

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Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

**RFP 25-597, Construction Manager at Risk (CMAR) – New Agricultural Center Complex**  
**Addendum #1**

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**Question 1:** Can the County allow us to submit Polk County Survey Questionnaires that were solicited and completed by our clients for previous Polk County RFP's?

**Answer 1:** 1) Yes, surveys from prior RFP submittals may be used if they meet the following criteria.

- i. The survey questions are the same
- ii. The scope of work of the prior RFP survey you are submitting is similar to the scope of the work of this RFP.
- iii. The survey submitted is for one of the projects identified under Tab 3.
- iv. If submitting a survey from a prior RFP, please manually strike through the RFP number and name on the top of the survey and write in the appropriate RFP number and name that matches the RFP you are submitting a proposal for.

**Question 2:** The RFP states that the proposal must be submitted in a 3-ring binder. Would Polk County accept a spiral-bound format instead, provided that all requested tabs and documentation are included and clearly organized?

**Answer 2:** Spiral-bound is acceptable format.

**Question 3:** 1) Electronic submissions via Kiteworks, are we still required to submit one original and five hard-copy binders, or may we submit only the electronic package? 2) The RFP lists separate Tabs in PDF format. Should we upload five individually labeled PDFs (e.g. "RFP 25-599 Tab 1.pdf"), or combine everything into one bookmarked PDF?

**Answer 3:** 1) For electronic submissions via Kiteworks, only the electronic package is required. Hard copies are required only for non-electronic submissions.  
2) Individual labeled PDF's for each Tab.

**Question 4:** Want to confirm that Exhibit 1 is not required to be included with each survey questionnaire, and that it is only provided as a reference for completing the top portion of the survey?

**Answer 4:** Exhibit 1 is detailed instructions on how to prepare and send performance surveys. It is not to be submitted with questionnaire.

**Question 5:** 1) Regarding Tab 6 of this RFP, please advise if proposers will be allocated points for inclusion of MBE sub-consultants.  
2) We've noticed several municipalities removing this particular qualification from the scoring criteria and our request is if the County would give any consideration to doing so?

**RFP 25-597, Construction Manager at Risk (CMAR) – New Agricultural Center Complex**  
**Addendum #1**

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**Answer 5:** 1) Yes proposers will be allocated points for women or minority business enterprises as defined in Tab 6 on page 10 & 11 of Bid Package.  
2) The County does not intend to remove this scoring criteria at this time.

**Question 6:** List of the contractors that attended the mandatory pre-bid meeting?

**Answer 6:** Attendance for the pre-proposal meeting is posted on the RFP's webpage. Which you can access at the following link: [www.polk-county.net/bid-form/rfp-25-597/](http://www.polk-county.net/bid-form/rfp-25-597/)

**Question 7:** Address for project site?

**Answer 7:** The site is located on County owned property at 2200 Homeland-Garfield Road, Bartow, Florida 33830.

## PROPOSAL SUBMITTAL INSTRUCTIONS

Proposers must submit their proposal prior to 2:00 p.m. on the receiving date. Proposals must be submitted in a “sealed” parcel or electronically through Polk County’s secure website, Kiteworks. Proposals will be publicly opened at 2:00 p.m. on the receiving date.

### **Sealed Parcel Submittal:**

If you are submitting a sealed parcel proposal submit one (1) original marked ORIGINAL and five (5) copies marked COPY of the proposal in a sealed parcel to the Procurement Division. The parcel should be labeled “RFP #25-597, Construction Manager at Risk – New Agricultural Center Complex” and marked with the proposer’s name and address. The Proposals may be mailed or delivered to:

**Polk County Procurement Division  
330 West Church Street, Room 150  
Bartow, FL 33830**

To assist with labeling the sealed parcel, please cut along the outer border and affix this label. Be sure to include the name of the company submitting the proposal where requested.

<b>Sealed Proposal. DO NOT OPEN</b>	
<b>RFP Number</b>	25-597
<b>RFP Title</b>	Construction Manager at Risk – New Agricultural Center Complex
<b>Due Date/Time:</b>	August 27, 2025, prior to 2:00 pm
<b>Submitted by:</b>	Marcobay Construction, Inc.
<b>Deliver To:</b>	Polk County Procurement Division 330 West Church Street, Room 150, Bartow, Florida 33830

Proposals may be mailed, express mailed or hand delivered. It is the Proposers responsibility to ensure their package is delivered to the Procurement Division prior to 2:00 p.m. on the Receiving date and time referenced above. Proposals delivered at 2:00 p.m. or later will not be accepted.



August 27, 2025

Polk County Procurement Division  
330 West Church Street, Room 150  
Bartow, Florida 33830

RE: RFP #25-597 – Construction Manager at Risk (CMAR) – New Agricultural Center Complex

Dear Selection Committee,

Marcobay Construction, Inc. is honored to submit our qualifications to serve as Construction Manager at Risk for the new Polk County Agricultural Center Complex. As a Polk County-based contractor with more than 50 years of continuous operations, Marcobay has partnered with both public and private owners to deliver facilities that are on time, within budget, and built to last. Our firm was founded in Lakeland in 1974, and today more than 85% of our annual work comes from repeat clients—evidence of the trust we've built in this community.


We understand the importance of this project as a **regional hub for agriculture and community events**, and the scope it entails: a main, open-air arena, two stall barns, paddock areas, restrooms, concessions, a maintenance building, RV and trailer parking, and full site development with stormwater and utility systems. The program will require not only expertise in constructing pre-engineered metal buildings, but also careful attention to phasing, logistics, and specialized site infrastructure.

We have assembled a team that has successfully delivered similar CMAR projects throughout Polk County and Central Florida, including the shared Agricultural Area Improvements at Bartow Middle & Bartow Senior High School, the Ag Barn at Tenoroc High School, Roosevelt Academy Ag Barn, the PEMB Riding Arena at Spring Lane Ranch, and the 35-acre expansion of the Lake Myrtle Little League Baseball Complex, to name a few. We also managed the new construction of pre-engineered, open playcourt canopies at 57 Polk County schools over the course of one year. These projects demonstrate our ability to manage **fast-track schedules, complex sitework, and high-profile community facilities** with transparency and accountability.

Our approach is built on **open-book GMP delivery, rigorous constructability reviews, and proactive value engineering**. We maximize tax savings through Owner Direct Purchase programs, provide real-time schedule and budget visibility through Procore, and ensure quality from first inspection through warranty. With The Lunz Group already engaged as the Architect, our past partnership on projects such as Catapult 3.0 and multiple projects with the Ruthvens allows us to start this project with a proven team dynamic in place.

Marcobay is committed to delivering a **cost-certain, schedule-driven, and durable Agricultural Center Complex** that Polk County can rely on for decades to come. We are grateful for the opportunity to be considered and look forward to partnering once again to deliver a facility that reflects the County's vision for its agricultural community.

Sincerely,



Jimmy Vessels, President





# MARCOBAY CONSTRUCTION

*respectfully submits our qualifications in response to*

**Polk County Board of County Commissioners**

**RFP #25-597**

**New Agricultural Center Complex**

CBC 047744 CGC 1532521 CBC 1532260 | LAKELAND, FL | [WWW.MARCOBAY.COM](http://WWW.MARCOBAY.COM)

# TAB 1: Executive Summary

## Polk County BOCC - RFP 25-597

### EXECUTIVE SUMMARY

We are Marcobay Construction, Inc.

As a Polk County-born builder with **50+ years** of continuous operations, we've partnered with public and private owners across Florida and the Southeast to deliver spaces that perform—on time, within budget, and without surprises. Our approach is simple: align early, communicate constantly, manage risk proactively, and finish strong. **It's why more than 85% of our annual work comes from repeat clients.**

### FIRM & CONTACT

**Proposer:** Marcobay Construction, Inc.

**Primary Contact:** Jimmy Vessels, President

**Address:** 3810 Drane Field Rd, Ste 16, Lakeland, FL 33811

**Phone:** (863) 680-2293

**Email:** jvessels@marcobay.com

### WHO WE ARE

**Years in Business:** 51 (est. 1974)

**Full-Time Employees:** 16

**Bonding Capacity:** Single \$50M / Aggregate \$100M

### SERVICES PROVIDED

- General Contracting
- Pre-construction Services
- Construction Management
- Design-Build
- Construction Management at-Risk
- Fast-Track Delivery
- Tilt-Up Construction



### LITIGATION & DISPUTES

Marcobay has not been terminated for cause and has not defaulted on a contract. We have no material litigation affecting performance or bonding; any routine industry matters over the past decade were resolved without impact. Documentation is available upon request.

### DRUG-FREE WORKPLACE

Marcobay Construction, Inc., is a Drug-Free workplace and requires all employees to take a drug test pre-employment.





## TAB 2: Approach to Project

### Polk County BOCC - RFP 25-597

#### PROJECT UNDERSTANDING & PRE-CONSTRUCTION SERVICES

Marcobay understands that delivering the Agricultural Center Complex requires not only traditional CMAR services but also careful planning around **site-specific challenges**. The project site, a former phosphate mine now used as a disc golf park and trail system, presents unique conditions for development. Access is limited to a single entry point across a railroad crossing, and maintaining safe, reliable access for construction traffic will be a priority in our logistics planning.

**During pre-construction, Marcobay will provide:**

- **Budget Estimating** – Develop reliable estimates at DD and CD phases. We recognize that the County has allocated \$3+ million for site improvements, and our estimates will separate site and vertical work to monitor compliance with this allocation.
- **Value Engineering** – Identify alternatives for utilities, site circulation, and structural systems that protect scope while reducing cost. For example, evaluating water supply options (private vs. city water) as the civil design develops.
- **Constructibility Reviews** – Proactively evaluate drawings for concurrency opportunities, such as starting arena foundation packages while site improvements are ongoing.
- **Master Schedule** – Develop a critical path schedule that aligns with grant funding requirements and the target of civil and vertical permit drawings by December 28th.
- **Long-Lead Item Procurement** – Marcobay identifies and advances procurement of critical long-lead materials such as structural steel, MEP equipment, and Pre-Engineered Metal Building (PEMB) systems. As an authorized Kirby Building Systems dealer, we can procure PEMB packages directly, providing competitive pricing, streamlined fabrication, and priority production scheduling. This ensures the arena and barns can be delivered efficiently, supporting the County's requirements for cost control, quality, and speed of execution.

#### COMPETITIVE BIDDING & GMP DEVELOPMENT

Marcobay administers a transparent subcontractor procurement process:

- **Competitive Subcontractor Bidding** – Solicit at least three bids per trade, targeting local and W/MBE firms where possible. Prequalify bidders for financial strength, safety record, and capacity.
- **General Conditions & Fee Negotiations** – Present a clear summary of general conditions and staffing plans, negotiated openly with Polk County to align resources with project requirements.
- **GMP Compilation** – Assemble an open-book Guaranteed Maximum Price (GMP) that includes subcontractor bids, allowances, contingencies, and general conditions. The County receives full visibility into bid results, buyout savings, and CM fee.
- **Early Procurement** – Identify and secure long-lead materials (PEMB systems, specialty site utilities) prior to GMP finalization where advantageous to maintain schedule.

#### OWNER DIRECT PURCHASE (ODP) & SALES TAX SAVINGS

Marcobay has a proven record of delivering millions in Owner savings through Polk County's ODP program. For this project we will:

- Administer ODP purchase orders directly with vendors for major trades (structural steel, PEMB packages, concrete, MEP equipment).
- Provide detailed ODP tracking logs to reconcile sales tax savings in real time.
- Ensure seamless integration of ODP items into subcontractor scopes for installation.
- Return savings to the Owner without compromising warranties, coordination, or schedule.

## TAB 2: Approach to Project Polk County BOCC - RFP 25-597

### MANAGEMENT & CONSTRUCTION APPROACH

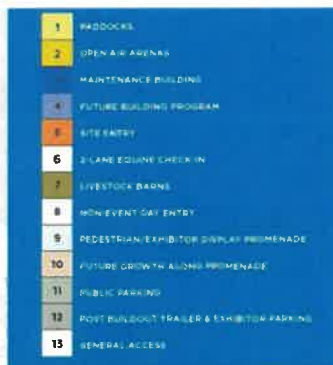
Our construction methodology is **built on communication, accountability, and efficiency**:

- **Site Logistics & Safety** – Develop a logistics plan for laydown, equipment circulation, and safety. Enforce a safety-first culture supported by weekly toolbox talks, daily job hazard analysis, and OSHA-compliant oversight.
- **Subcontractor Coordination** – Utilize Procore to track RFIs, submittals, and change events. Maintain weekly subcontractor coordination meetings to ensure alignment with schedule.
- **Phased Construction** – Sequence site infrastructure first (utilities, stormwater, parking), followed by arena, barns, and support facilities. This approach minimizes risk and accelerates building turnover.
- **Communication with the Owner/Architect** – Conduct weekly OAC meetings with Polk County and The Lunz Group to review budget, schedule, quality, and outstanding items.

### QUALITY & CONTRACT COMPLIANCE

Marcobay enforces strict QA/QC measures to ensure the County receives durable, code-compliant facilities:

- **QA/QC Program** – Independent review of drawings, submittals, and mock-ups led by our QA/QC Manager.
- **Inspections & Testing** – Coordinate with third-party testing agencies and AHJs, ensuring efficient approvals and compliance with concurrency requirements.
- **Mock-Ups & Standards** – Establish first-work benchmarks for arenas, barns, and concessions to set quality expectations.
- **Closeout Readiness** – Begin turnover preparation early, ensuring Polk County receives complete O&M manuals, training, and warranties at occupancy.



Site Evaluation



Our approach addresses the key issues identified during the pre-bid meeting: limited site access, extensive site development, concurrency, unknown water source, grant funding deadlines, and the need to construct within a fixed budget.

**With our proven CMAR process, strong partnership with The Lunz Group, deep Polk County roots, and authorized Kirby dealer status, we are uniquely positioned to deliver the Agricultural Center Complex on schedule, within budget, and at the quality standard expected by the County.**



## TAB 3: Experience, Expertise, Personnel & Technical Resources

### Polk County BOCC - RFP 25-597



#### DATE OF COMPLETION

February 22, 2016

#### ADDRESS

905 Lake Myrtle Park Drive,  
Auburndale, FL

#### GMP AMOUNT

\$5,617,298

#### SIZE

Buildings: 16,000 SF  
Fields: 35 acres

#### CLIENT CONTACT

Cody McGhee,  
Director of Parks & Recreation  
(p) 863.965.5545

#### CHANGE ORDERS

Total: \$10,722

#### RELEVANCIES

- CMAR
- Public Entity
- Polk County
- Assigned Team

## LAKE MYRTLE LITTLE LEAGUE COMPLEX

Client: City of Auburndale

#### SCOPE OF WORK

Marcobay Construction completed the 35-acre expansion of the Lake Myrtle Little League Complex, transforming the venue into a multi-field tournament hub. The project added new natural-turf baseball fields arranged in pods for simultaneous play, each built with engineered sub-grades, under-drainage, properly graded infields, warning tracks, and safety netting. Team facilities include shaded **metal-roof dugouts**, bullpens, batting cages, and foul-line accessories sized for high-cycle tournament use.

To support the fields and fans, Marcobay delivered a full suite of site and building improvements: **mass grading and storm-water ponds; domestic water, fire, sanitary, electrical, and communications extensions; a smart, zoned irrigation system; sports-lighting infrastructure and controls; shaded bleachers with ADA routes to every field; and a new restroom/concession building with storage.** The expansion also added parking and access drives, bus/coach drop-off, pedestrian safety features, ticketing gates, and branded scoreboards and way-finding.

Sequenced construction allowed ongoing league play elsewhere in the complex while work progressed, and first-work mockups for backstops, dugouts, and infield sections set the quality standard from day one. The result is a tournament-ready complex that increases capacity, improves player and spectator experience, and brings more families, and economic activity to Polk County.



## TAB 3: Experience, Expertise, Personnel & Technical Resources

### Polk County BOCC - RFP 25-597



#### DATE OF COMPLETION

October 19, 2017

#### ADDRESS

4427 Spring Lane,  
Lakeland, FL 33811

#### CONTRACT AMOUNT

\$375,000

#### SIZE

27,280 SF

#### CLIENT CONTACT

Heather Shea, Owner  
(p) 863-393-4850

#### CHANGE ORDERS

None

#### RELEVANCIES

- Open-Air Arena
- PEMB
- Site Improvements
- Location: Polk County

## SHEA COVERED RIDING ARENA

Client: Spring Lane Ranch, LLC.

### SCOPE OF WORK

Marcobay Construction served as the Construction Manager for the Shea Covered Riding Arena at Spring Lane Ranch, a premier equestrian facility in Lakeland, Florida. This open-air, covered equine center was designed and constructed to support a wide range of programs including training, instruction, equine rehabilitation for all breeds and disciplines, and show-prep clinics. The facility also doubles as a flexible venue, hosting exhibitions and corporate gatherings.

Delivered on a fast-track schedule, the project leveraged Marcobay's expertise as an authorized Kirby Building Systems dealer to streamline procurement, fabrication, and installation. The facility was constructed using a Kirby Pre-Engineered Metal Building (PEMB) system, allowing for cost efficiency, speed of delivery, and long-term durability.

The arena features a 124-foot clear span ridge frame with an overall footprint of 129' x 220'. The KirbyRib II roof system was selected for its proven performance in Florida's climate, with a vented raised ridge providing natural ventilation. With 18'-8" eave heights and a completely open-air design, the structure offers ample clearance, circulation, and comfort for both horses and riders.

Site improvements included the demolition and relocation of existing fencing with salvaged materials, installation of a new driveway apron in accordance with Polk County LDC standards, and upgrades to drainage and inlet systems. The sidewalls feature full wall deletions to 14 feet, maximizing natural light and cross-ventilation while maintaining year-round functionality.

## TAB 3: Experience, Expertise, Personnel & Technical Resources

### Polk County BOCC - RFP 25-597



#### DATE OF COMPLETION

September 1, 2018

#### ADDRESS

1000 Dunson Rd,  
Davenport, FL, 33896

#### GMP AMOUNT

\$8,765,706

#### SIZE

63,797 SF

#### CLIENT CONTACT

Ralph Frier, Executive Director  
(p) 863.419.3199

#### CHANGE ORDERS

11 Change Orders due to  
Client Requests  
Total: \$457,706

#### RELEVANCIES

- CMAR
- Public Entity
- Fast-Track Schedule

## NEW MIDDLE SCHOOL CAMPUS

Client: Ridgeview Global Studies Academy / Polk County Public Schools

### SCOPE OF WORK

Marcobay Construction completed the new middle school campus expansion for Ridgeview Global Studies Academy in Davenport, Florida, supporting grades 6 through 8. The project included the construction of five new buildings--four single-story and one gymnasium--for a total of approximately 56,000 square feet of new educational space.

The buildings were thoughtfully designed and constructed to support core curriculum and enrichment activities, and included:

- Twenty-one (21) classrooms, (seven per grade level), including science demonstration classrooms
- A culinary arts lab and an additional elective classroom
- A full administrative suite
- A dedicated band room
- A multi-purpose/student dining facility with a full-service kitchen
- A gymnasium with a regulation-size basketball court, telescoping bleachers, and boys' and girls' locker rooms

Marcobay's scope of work also included full site clearing and development, along with off-site road improvements to support increased traffic flow and accessibility.



## TAB 3: Experience, Expertise, Personnel & Technical Resources

### Polk County BOCC - RFP 25-597



#### DATE OF COMPLETION

October 27, 2020

#### ADDRESS

3700 Bannon Island Road  
Haines City, FL 33844

#### GMP AMOUNT

\$41,074,065

#### SIZE

120 acres / 190,000 SF

#### CLIENT

McLand Holdings, LLC.

#### CLIENT CONTACT

Patrick Huston, Project Manager  
(e) [patrick.huston@carvana.com](mailto:patrick.huston@carvana.com)

#### CHANGE ORDERS

15 change orders due to scope additions per Owner  
Total: \$2,300,000

#### RELEVANCIES

- Contract: GMP
- PEMB
- Extensive Site-Development
- Fast-Track Schedule
- Location: Polk County

## INSPECTION & MAINTENANCE FACILITY

Client: Carvana / McLand Holdings, LLC.

### SCOPE OF WORK

Marcobay Construction delivered Carvana's Central Florida Inspection & Maintenance Facility, a prototype building and the first of its kind in Florida. Situated on a 120-acre site with extensive site development and underground utilities, nearly half of the overall contract was dedicated to extensive site work and included more than \$12 million in heavy-duty asphalt and concrete pavement to support vehicle logistics. The site also featured a car wash facility, on-site petroleum/fuel systems, and a security guard booth. The 190,000 SF pre-engineered metal building (PEMB) by Kirby Building Systems, was constructed to house advanced equipment for vehicle inspection, repair, and reconditioning. Delivered under a fast-track CMAR contract, the facility highlights Marcobay's ability to manage large-scale infrastructure, specialty systems, and prototype industrial construction for high-profile national clients.





# TAB 3: Experience, Expertise, Personnel & Technical Resources

## Polk County BOCC - RFP 25-597



### DATE OF COMPLETION

February 5, 2018

### ADDRESS

1111 Forest Park St  
Lakeland, FL 33803

### GMP AMOUNT

Original: \$3,682,000  
Final: \$3,068,454

### SIZE

Athletic Center: 38,000 SF

### PROJECT DURATION

14 months

### CLIENT CONTACT

Matt Green, CFO  
(p) 863.688.2771  
(e) mattgreen@lcsonline.org

### CHANGE ORDERS

Deductive CO from DPO +  
Sales Tax Savings

**Total Cost Savings: \$613,546**

## PHASE II - ATHLETICS CENTER

Client: Lakeland Christian School

### SCOPE OF WORK

Marcobay Construction served as CMAR for the Roger Evans Athletic Center at Lakeland Christian School, a two-story, 23,008 SF facility featuring a state-of-the-art strength-and-conditioning center, coaches' offices, and locker rooms. Delivered under a GMP contract, the project achieved substantial cost savings of more than \$600,000 through the strategic use of Owner Direct Purchase orders and sales tax savings, reducing the final cost to \$3,068,454 from the original \$3,682,000 contract amount. Completed on schedule with a TCO in February 2018, the project also included additional scope with a separate press box, concessions building, and storage facility, enhancing the school's athletic complex and providing long-term value to its student-athletes and staff.

### OTHER RELEVANT PROJECTS COMPLETED FOR LCS:

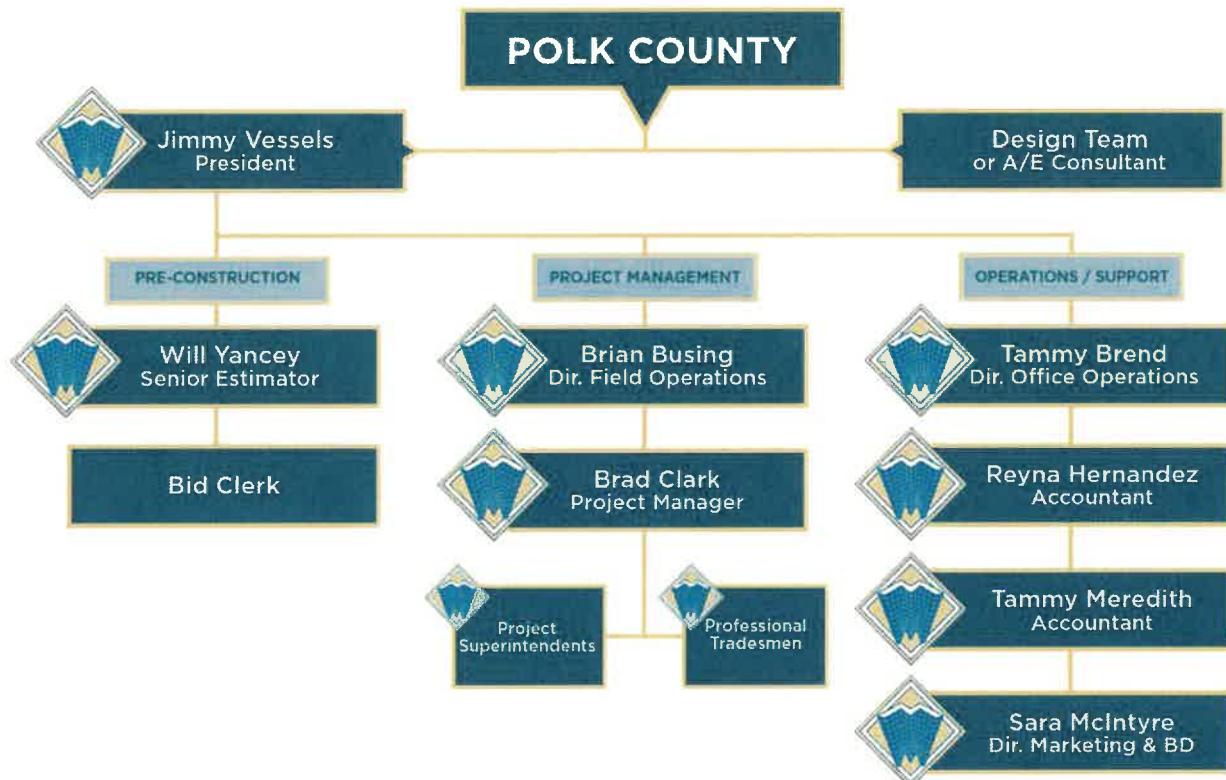
YEAR	PROJECT	ORIGINAL	FINAL	SCOPE
2018	LCS RISE	\$1,057,988	\$1,504,000	
2018	Baseball Fields & Dugout	\$249,000	\$249,000	
2017	Cafeteria Courtyard Canopy	\$262,000	\$262,000	4,700 SF pre-engineered aluminum canopy & covered walkway system
2012	Canopy Installation	\$105,790	\$105,790	
2008	Elementary / Middle School Expansion	\$8,793,961	\$8,187,193	New 3-story 71K SF tilt wall school, new maintenance facility, and renovation of early childhood education building
2007	Phase I - Athletic Fields & Maintenance Building	\$2,638,293	\$2,075,964	Soccer & Football fields, and grand stands, with lights + other campus improvements



# TAB 3: Experience, Expertise, Personnel & Technical Resources

## Polk County BOCC - RFP 25-597

### ORGANIZATIONAL STRUCTURE



### MARKET SECTORS WE SERVE





## TAB 3: Experience, Expertise, Personnel & Technical Resources

### Polk County BOCC - RFP 25-597



## JIMMY VESSELS

### President

Jimmy Vessels brings more than 41 years of construction management experience, including **over three decades at Marcobay Construction**. As President, he leads the execution of projects ranging from new school campuses to large-scale industrial builds. **Jimmy has extensive experience managing all aspects of CMAR construction**, including new builds, phased renovations, and occupied work. His leadership ensures projects meet scheduling milestones, adheres to budget goals, and exceed district expectations for quality and safety.

### CREDENTIALS

Certified Building Contractor  
*State of Florida*  
*CBC047744*  
OSHA Safety (30-Hour)

### YEARS OF EXPERIENCE

41 years in Construction

### YEARS AT MARCOBAY

35 Years at Marcobay

### OFFICE LOCATION

Lakeland, FL

### REFERENCES

Brandon Clark, President  
The Ruthvens  
(p) 863.450.9540  
(e) brandon.clark@ruthvens.com

Wesley Beck, President  
Aspyre Properties  
(p) 863.686.9000  
(e) wesley@wesleybeck.com

### RELEVANT EXPERIENCE

Lake Myrtle Little League Complex Expansion  
\$5.6M | 35 acres | ROLE: Project Manager

Ridgeview Global Middle School Expansion  
\$8.7M | 21K SF | ROLE: Project Manager

Tenoroc High School Ag Barn  
ROLE: Project Manager

Bartow Middle / Bartow High School Ag Area Improvements  
ROLE: Project Manager

Carvana Inspection & Maintenance Facility  
\$41M | ROLE: Project Manager

Lakeland Christian School Athletic Complex  
\$1.9M | 22K SF | ROLE: Project Manager

Horizon Elementary - New Campus  
\$18M | 105K SF | ROLE: Project Manager

Winter Haven High School - Renovations  
\$2.2M | 19K SF | ROLE: Project Manager

Combee Elementary - New Classroom Addition  
\$4.2M | 29K SF | ROLE: Project Manager

Sleepy Hill Elementary - New Campus  
\$17M | 105K SF | ROLE: Project Manager

Okeechobee Achievement Academy  
\$5.8M | ROLE: Project Manager

Davenport School of the Arts - New Construction  
\$29.8M | 140K SF | ROLE: Project Manager

Polk County Schools - PEMB Playcourt Canopy Construction  
\$2.5M | 57 Schools | ROLE: Project Manager

## TAB 3: Experience, Expertise, Personnel & Technical Resources

### Polk County BOCC - RFP 25-597



### WILL YANCEY

#### *Senior Estimator*

Since joining Marcobay in 2007, Will Yancey has served as a key contributor in the company's pre-construction and estimating efforts. **With over 18 years of experience, he currently leads the estimating department as Senior Estimator**, bringing a deep expertise in cost analysis, bid strategy, and scope development across a broad range of market sectors.

**Will provides detailed, accurate cost projections from conceptual budgeting through GMP delivery.** He is known for his ability to collaborate with design teams, owners, and subcontractors alike to identify cost-saving opportunities without compromising project intent.

### EDUCATION

Southeastern University  
*Pastoral Studies*

### CREDENTIALS

OSHA Safety (30-Hour)

### YEARS OF EXPERIENCE

24 years in Construction

### YEARS AT MARCOBAY

18 Years at Marcobay

### OFFICE LOCATION

Lakeland, FL

### REFERENCES

Steve Scruggs, President  
Lakeland EDC  
(p) 863.687.3788  
(e) [sscruggs@lakelandedc.com](mailto:sscruggs@lakelandedc.com)

Brandon Clark, President  
The Ruthvens  
(p) 863.450.9540  
(e) [brandon.clark@ruthvens.com](mailto:brandon.clark@ruthvens.com)

### RELEVANT EXPERIENCE

Ridgeview Global Middle School Expansion  
\$8.7M | 21K SF | ROLE: Estimator

Lake Myrtle Little League Complex Expansion  
\$5.6M | 35 acres | ROLE: Estimator

Carvana Inspection & Maintenance Facility  
\$41M | ROLE: Project Manager

Catapult 3.0 New Office Building  
\$6.5M | 40K SF | ROLE: Estimator

Ridgeview Global Middle School Expansion  
\$8.3M | 64K SF | ROLE: Senior Estimator

Lakeland Christian School Athletic Complex  
\$1.9M | 22K SF | ROLE: Estimator

Horizon Elementary - New Campus  
\$18M | 105K SF | ROLE: Estimator

Winter Haven High School - Renovations  
\$2.2M | 19K SF | ROLE: Estimator

Combee Elementary - New Classroom Addition  
\$4.2M | 29K SF | ROLE: Estimator

Sleepy Hill Elementary - New Campus  
\$17M | 105K SF | ROLE: Estimator

Okeechobee Achievement Academy  
\$5.8M | ROLE: Estimator



## TAB 3: Experience, Expertise, Personnel & Technical Resources

### Polk County BOCC - RFP 25-597



### BRIAN BUSING

*Director of Field Operations*

Providing leadership and oversight across all active job sites, Brian ensures project execution aligns with safety standards, schedule demands, and quality expectations. As Director of Field Operations, not only does Brian support field teams, he also collaborates with Marcobay's executive and pre-construction teams to inform constructibility reviews and manpower planning.

**Brian's field-first mindset, combined with his calm and practical approach to problem solving, ensures that each team is equipped for success from the ground up.**

### EDUCATION

Florida Southern College  
*Criminology*

### CREDENTIALS

Certified General Contractor  
State of Florida  
CGC1532521  
OSHA Safety

### YEARS OF EXPERIENCE

14 years in Construction

### YEARS AT MARCOBAY

8 Years at Marcobay

### REFERENCES

Ralph Frier, Executive Director  
Ridgeview Global Studies Academy  
(p) 863.419.3199  
(e) [ralph.frier@rgsa.com](mailto:ralph.frier@rgsa.com)

Matt Hedgren, Captain  
The Salvation Army  
(p) 863.853.2214  
(e) [matt.hedgren@uss.salvationarmy.org](mailto:matt.hedgren@uss.salvationarmy.org)

### RELEVANT EXPERIENCE

Ridgeview Global Classroom Addition  
\$8.7M | 21K SF | ROLE: Superintendent

Salvation Army Worship & Community Center  
\$8M | 38K SF | ROLE: Director of Field Operations

JDA Memorial - JAGG Electric Tenant Improvements  
\$1.3M | 173K SF | ROLE: Director of Field Operations

JDA S.Pipkin Rd - New Shell Storage Warehouse  
\$8.7M | 156K SF | ROLE: Superintendent

Lakeland Central Park - New Shell Warehouse - BLD 200  
\$8M | 705K SF | ROLE: Superintendent

Lakeland Central Park - New Shell Warehouse - BLD 300  
\$8M | 261K SF | ROLE: Director of Field Operations

Lakeland Central Park - Ashley Furniture Build Out - BLD 300  
\$6M | 261K SF | ROLE: Director of Field Operations



## TAB 3: Experience, Expertise, Personnel & Technical Resources

### Polk County BOCC - RFP 25-597



#### BRAD CLARK

*Project Manager*

As an experienced Project Manager, Brad oversees project planning, coordination, and closeout across multiple market sectors. Known for his clear communication and client-focused delivery, Brad collaborates with estimating, operations, and field teams to ensure projects are executed safely, on time, and within budget, while maintaining Marcobay's high standards for quality and customer satisfaction.

#### EXPERIENCE

Casa San Alfonso Affordable Homes & Clubhouse  
ROLE: Project Manager

Lincoln Pace Rd - New Shell Storage Warehouses  
\$27.6M | 500K SF | ROLE: Project Manager

Salvation Army Worship & Community Center  
\$8M | 38K SF | ROLE: Project Manager

JDA MCI Conklin Metals Spec Office Tenant Improvements  
\$620K | 111K SF | ROLE: Project Manager

JDA Memorial - New Shell Storage Warehouse  
\$15M | 173K SF | ROLE: Project Manager

JDA S.Pipkin Rd - New Shell Storage Warehouse  
\$8.7M | 156K SF | ROLE: Superintendent

#### EDUCATION

The University of South Florida  
*Architecture*

Sante Fe Community College  
*Construction Science*

#### CREDENTIALS

OSHA Safety (30-Hour)

#### YEARS OF EXPERIENCE

22 years in Construction

#### YEARS AT MARCOBAY

3 years at Marcobay

#### REFERENCES

Cantey Heath, R.E. Manager

JDA

(p) 803.261.4273

(e) cheath@johnsondevelopment.net

Matt Hedgren, Captain

The Salvation Army

(p) 863.853.2214

(e) matt.hedgren@uss.salvationarmy.org





## TAB 3: Experience, Expertise, Personnel & Technical Resources

### Polk County BOCC - RFP 25-597



#### MATT REITH

##### *Senior Superintendent*

As Senior Superintendent for Marcobay Construction, Matt Reith brings over 20 years of construction experience, including more than a decade dedicated to educational, institutional, and commercial work across Central Florida. With deep field expertise and a background supporting both ground-up and renovation projects, Matt leads day-to-day job site operations with a focus on safety, schedule integrity, and quality craftsmanship.

Matt has played key roles on numerous public facilities, including multi-building ground-up schools, classroom additions, and complex demolition-and-rebuild efforts. In addition to his leadership in the field, he has served as a Warranty Coordinator and Assistant Superintendent on large-scale CMAR projects, managing final closeouts, punch list completion, and owner turnover. His collaborative approach and attention to sequencing make him a reliable and solutions-oriented superintendent on time-sensitive jobs.

#### CREDENTIALS

OSHA Safety (30-Hour)

#### YEARS OF EXPERIENCE

20 years in Construction

#### YEARS AT MARCOBAY

19 years at Marcobay



#### RELEVANT EXPERIENCE

Davenport School of the Arts

\$29.8M | 140K SF | ROLE: Asst. Superintendent

Lake Myrtle Little League Complex Expansion

\$5.6M | 35 acres | ROLE: Superintendent

Sleepy Hill Elementary - New Campus

\$16.6M | 105K SF | ROLE: Asst. Superintendent

Horizon Elementary - New Campus

\$18M | 105K SF | ROLE: Asst. Superintendent

Combee Elementary - New Classroom Addition

\$4.2M | 29K SF | ROLE: Asst. Superintendent

Berkley Elementary - New Classroom Addition

\$1.5M | 10K SF | ROLE: Asst. Superintendent

Lakeland Christian School - Campus Stair Case/Elevator Add.

ROLE: Asst. Superintendent

Lakeland Christian School - Gymnasium Classroom Remodel

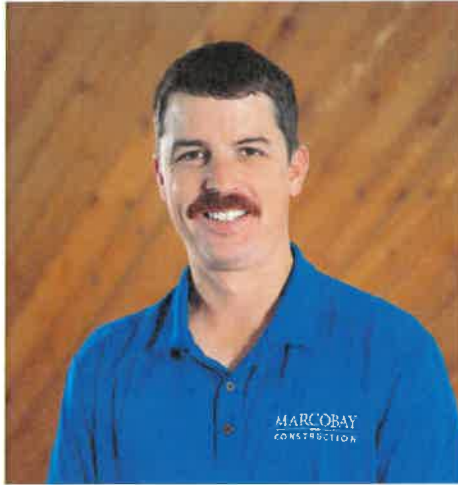
ROLE: Asst. Superintendent

Pace Rd - Warehouse Hyundai Tenant Improvements

ROLE: Superintendent

## TAB 3: Experience, Expertise, Personnel & Technical Resources

### Polk County BOCC - RFP 25-597



### ANTHONY SLIGH

#### *Superintendent*

As a Licensed Certified General Contractor, Anthony serves as a Superintendent at Marcobay with enhanced technical authority and regulatory insight. Anthony brings strong hands-on expertise in schedule management, quality control, subcontractor coordination, and safety compliance. His CGC license enables him to interpret plans, manage inspections, and ensure code compliance at every state of construction. He is detail-oriented and solution-focused, working closely with project managers and stakeholders to drive successful outcomes both practically and efficiently.

#### EDUCATION

Covenant College  
*Business Law*

#### CREDENTIALS

Certified General Contractor  
State of Florida  
CGC1532260  
OSHA Safety (30-Hour)

#### YEARS OF EXPERIENCE

10 years in Construction

#### YEARS AT MARCOBAY

5 Years at Marcobay

#### RELEVANT EXPERIENCE

JDA S.Pipkin Rd - New Shell Storage Warehouse  
\$8.7M | 156K SF | ROLE: Superintendent

Keymark Drane Field Rd - New Shell Storage Warehouse  
\$10.5M | 76K SF | ROLE: Superintendent

Ruthvens 3150 County Line Rd Bays 3-4 - Tenant Improvements  
ROLE: Superintendent

Ruthvens 3515 Reynolds Rd Bays 5-6 - Tenant Improvements  
ROLE: Superintendent

Ruthvens 3919 Airpark Dr Bays 17-19 - Tenant Improvements  
ROLE: Superintendent

Ruthvens 5865 New Tampa Hwy Bays 5-6 - Tenant Improvements  
ROLE: Superintendent

Ruthvens 5865 New Tampa Hwy Bays 7-9 - Tenant Improvements  
ROLE: Superintendent

Fancy Farms - Hurricane Fence & Brick Repair  
ROLE: Superintendent





# TAB 4: Scheduling and Cost Control

## Polk County BOCC - RFP 25-597

### APPROACH TO SCHEDULING

#### SCHEDULING SYSTEM

Marcobay utilizes a Critical Path Method (CPM) scheduling system generated in Microsoft Project and integrated into Procore Project Management. This ensures every activity is tracked from notice-to-proceed through turnover, with clear accountability for subcontractors and vendors. The master CPM schedule will include all major milestones—site development, utilities, arena, barns, concessions, and closeout—broken into logical work packages to allow concurrency and fast-tracking where feasible.

Schedules are continuously updated based on subcontractor input, field progress, and material delivery. We supplement the CPM schedule with three-week look-ahead schedules reviewed in weekly OAC and subcontractor meetings, ensuring near-term activities stay on track.

#### SUBCONTRACTOR COORDINATION

Marcobay enforces subcontractor adherence to schedule through:

- Weekly subcontractor coordination meetings focused on near-term milestones.
- Look-ahead schedules issued to each subcontractor, signed off as part of weekly accountability.
- Direct reporting in Procore, where subcontractors upload progress photos, daily logs, and delivery updates.
- Escalation protocols: issues are identified, corrective actions are assigned, and recovery plans are implemented to bring tasks back into compliance.

#### LEVEL OF DETAIL

Marcobay's schedules track activities to the trade and phase level, including:

- Site access improvements (railroad crossing, staging areas).
- Sitework and utilities (stormwater, city water coordination).
- PEMB procurement and erection for arena and barns.
- Concessions, restrooms, and maintenance buildings.
- Finishes, landscaping, and punch list.

We integrate shop drawing logs, submittal tracking, RFIs, and ASIs into Procore, which ties directly to the schedule. This ensures design clarifications are answered quickly and do not disrupt the critical path.





# TAB 4: Scheduling and Cost Control

## Polk County BOCC - RFP 25-597

### COST CONTROL APPROACH

#### COST CONTROL

Marcobay's cost control system is built on open-book transparency:

- **Budget Reports** – Provide monthly cost-to-complete reports showing commitments, pending changes, and contingency status.
- **Owner Direct Purchase (ODP)** – Administer ODP for major packages (steel, PEMB, concrete, MEP), returning significant sales tax savings directly to the County.
- **Change Management** – All potential changes are logged in Procore, priced, and presented for County approval prior to commitment.
- **Forecasting** – Track actual costs vs. GMP to ensure alignment and proactively identify trends.

**Example:** On the Lakeland Christian School Roger Evans Athletic Center, Marcobay saved the Owner more than \$600,000 from the original GMP by implementing an ODP program and providing continuous VE throughout design and construction.

#### ITEMS OUTSIDE THE “COST OF WORK”

We separate and manage these items in the open so there are no surprises:

- **Pre-construction Phase Services:** Time-phased, deliverable-based level of effort tied to milestones (SD/DD/CD). Hours and tasks are capped and tracked monthly.
- **General Conditions:** Built from the schedule up (staffing, trailers/IT, temp utilities, protections, site services, safety/QA) and reconciled monthly. Adjusts up or down only with approved scope/schedule changes.
- **CM Fee:** A fixed, transparent percentage applied to Cost of the Work and shown as its own line—no fee on ODPs, permits, or sales tax per County direction.
- **Bond:** Pass-through at the actual rate; we competitively source and show invoices.

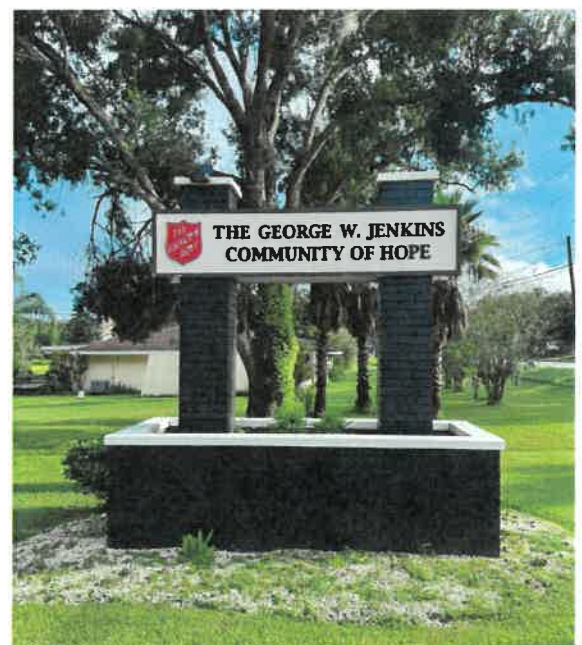
#### INDICATIVE PERCENTAGES:

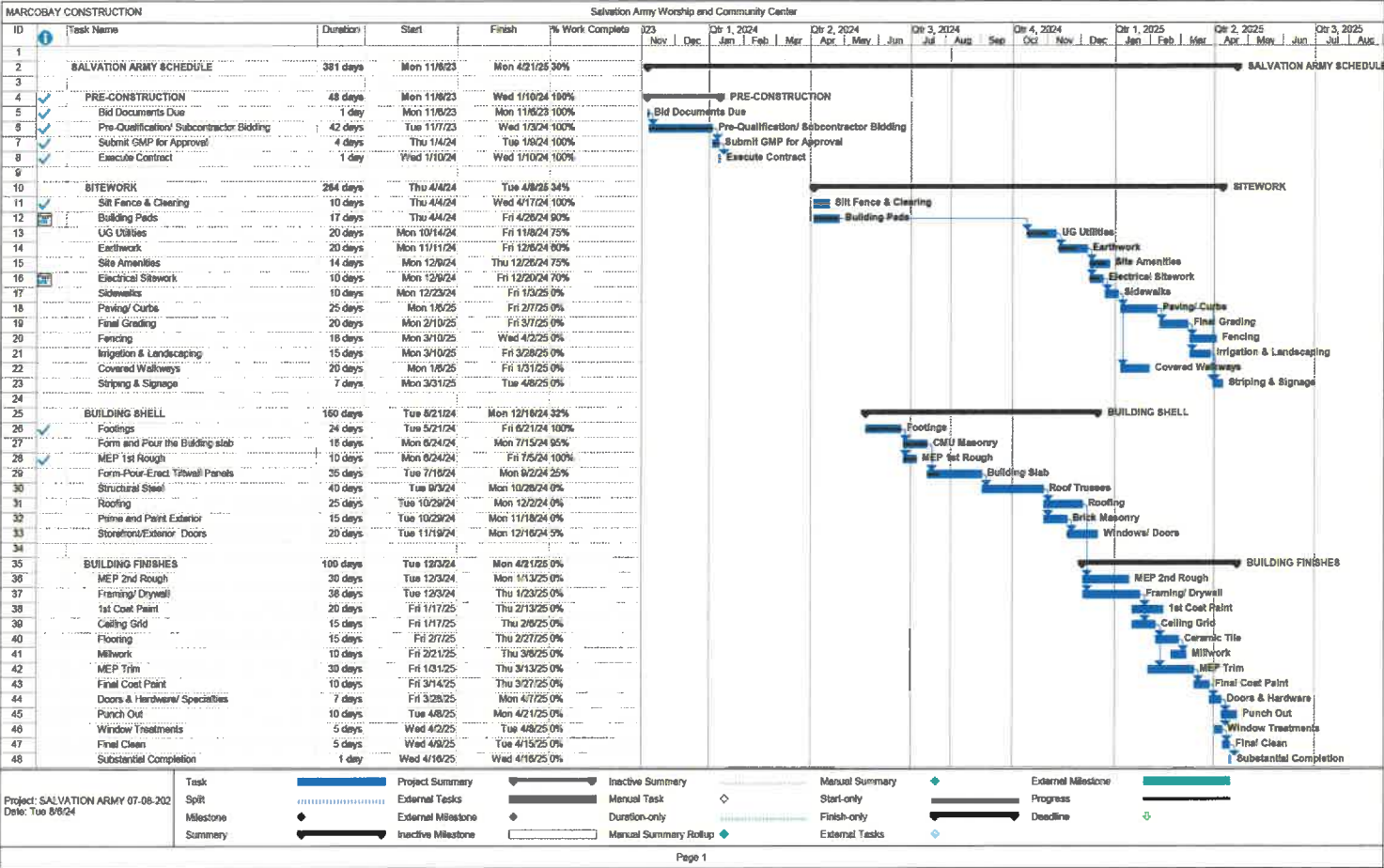
*(for a project of this size; informational only, not a final offer)*

- **General Conditions** (incl. precon): ~5%
- **CM Fee:** ~5%
- **Performance & Payment Bond:** ~0.9–1.0%

#### SUMMARY

Our systems provide Polk County with clear visibility, proactive problem-solving, and full transparency. By combining CPM schedules, weekly look-aheads, tech integration, and open-book reporting, we ensure accountability and budget certainty. Our track record of delivering complex projects on time and within budget—including schools, community facilities, and large-scale tilt-wall/PEMB structures—demonstrates our readiness to execute the Agricultural Center Complex with the speed, discipline, and transparency this project requires.





**COST CONTROL-FINAL SOV RECAP-JOB #885 REVISED-5/05/2025**

	ORIGINAL CONTRACT SOV	CURRENT JOB COST	
GENERAL CONDITIONS	\$ 260,000.00	\$ 260,000.00	
SWPPP SERVICES	\$ 5,000.00	\$ -	
CONCRETE WASHOUT PIT	\$ 10,000.00	\$ 10,000.00	
SOIL POISONING	\$ 12,480.00	\$ 12,480.00	
FENCE-ADDED SCOPE	\$ -	\$ 55,436.00	
CONCRETE	\$ 3,353,800.00	\$ 3,592,167.24	
STRUCTURAL STEEL MATERIAL	\$ 1,564,875.00	\$ 1,448,457.30	
STRUCTURAL STEEL ERECTION	\$ 224,000.00	\$ 224,000.00	
LADDER FALL PROTECTION	\$ 2,500.00	\$ -	
MISC IRON	\$ 9,360.00	\$ -	
WOOD BLOCKING	\$ 4,680.00	\$ 4,680.00	
ROUGH HARDWARE	\$ 1,560.00	\$ 1,560.00	
ROOFING & SHEET METAL	\$ 688,000.00	\$ 688,000.00	
HM DOORS & HARDWARE	\$ 8,500.00	\$ 8,500.00	
DOCK DOORS & DOCK EQUIPMENT	\$ 206,986.00	\$ 211,956.46	
STOREFRONT GLASS	\$ 268,660.00	\$ 235,337.00	
PAINTING	\$ 125,723.00	\$ 103,360.00	
INTERIOR FJ CAULKING	\$ 60,328.00	\$ 20,000.00	PARTIAL FJ & COLUMN JOINTS ONLY
TP CAULKING	\$ 44,545.00	\$ 44,545.00	
SW CAULKING	\$ 5,000.00	\$ 5,000.00	
FIRE EXTINGUISHERS	\$ 4,000.00	\$ 4,000.00	
SIGNS	\$ 2,250.00	\$ 28,795.24	INCLUDES DS,AAS & MCB DOCK LABOR
DOCK CANOPY	\$ 68,200.00	\$ 68,200.00	
ENTRY CANOPY	\$ 113,880.00	\$ 113,880.00	
FIRE SPRINKLER	\$ 479,052.00	\$ 479,052.00	
PLUMBING	\$ 79,374.00	\$ 79,374.00	
HVAC	\$ 32,468.00	\$ 14,988.00	
ELECTRICAL	\$ 340,172.00	\$ 367,752.00	INCLUDES PE CO#1-5
ELECTRICAL INFRASTRUCTURE	\$ 132,380.00	\$ 132,380.00	
CONTINGENCY	\$ 75,000.00	\$ -	APPLIED TO OVERAGES & CREDIT BELOW
SUBTOTAL	\$ 8,182,773.00	\$ 8,213,900.24	
FEE	\$ 450,053.00	\$ -	FEE RECALCULATED BELOW
SUBTOTAL W/FEE	\$ 8,632,826.00	\$ 8,213,900.24	SUBTOTAL LESS FEE
8" CONCRETE PAVING IN TRUCK COURT	\$ 622,450.00	\$ -	INCLUDED IN CONCRETE
REVISED PANELS	\$ (304,055.00)	\$ -	INCLUDED IN CONCRETE
ORIGINAL CONTRACT AMOUNT	\$ 8,951,221.00	\$ 8,213,900.24	SUBTOTAL-SUB COST & GCs
CO#1-REVISED CONCRETE PAVING	\$ (86,100.00)	\$ 450,053.00	REVISED FEE-ACTUAL \$451,764.51
CURRENT CONTRACT AMOUNT	\$ 8,865,121.00	\$ 8,663,953.24	CURRENT JOB COST W/FEE
LESS FINAL JOB COST W/FEE	\$ (8,663,953.24)		
CO#2-FINAL RECAP-DEDUCT \$201,167.76	\$ 201,167.76		



## TAB 5: Polk County Entity

### Polk County BOCC - RFP 25-597

## POLK COUNTY ENTITY

Since 1974.

Marcobay Construction, Inc. anchors more than five decades of continuous operations in Polk County--***one of the few commercial contractors born here and still building here.***

The blueprint design used throughout our presentation isn't just decorative--it's an original, hand-drawn blueprint from an early Lakeland project and reflects what we've stood for ever since: lasting structures, long-term relationships, and a legacy built on trust, craftsmanship, and community.

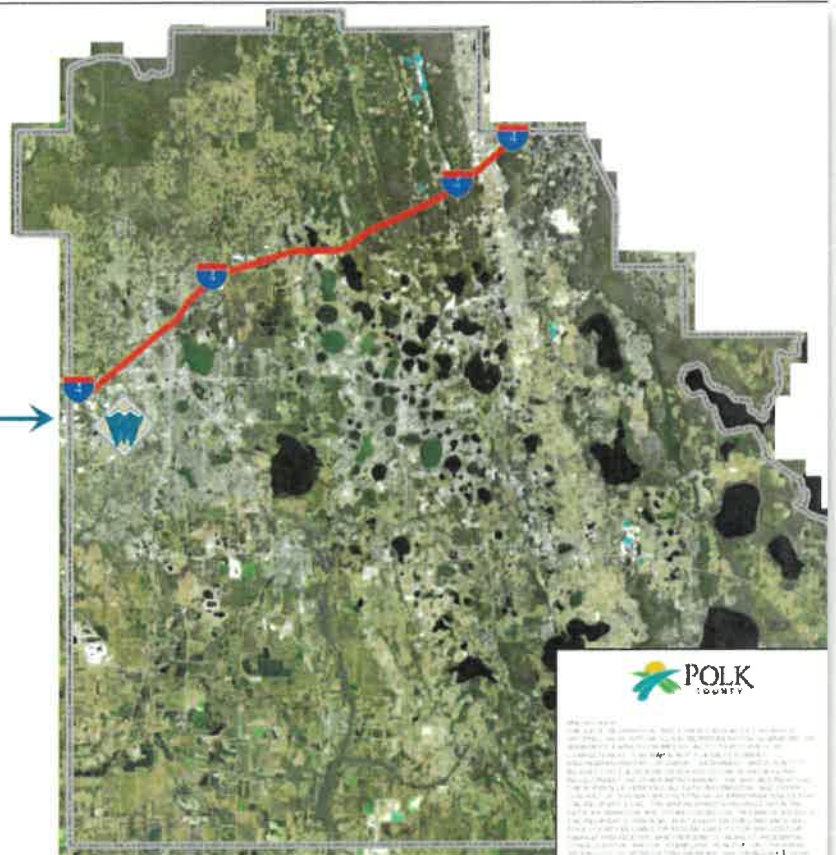
### WHAT THIS MEANS FOR POLK COUNTY

- Local decision-makers and field staff a short drive from any County site
- Deep bench of Polk-based subcontractors and suppliers
- Familiarity with local AHJs, permitting, and utility coordination
- Dollars and jobs that stay in the local economy



Headquarters: 3810 Drane Field Rd, Ste 16  
Lakeland, FL 33811

Distance to Project: 17 miles



# TAB 6: Certified Woman or Minority Business Enterprise

## Polk County BOCC - RFP 25-597

### W/MBE STATUS

While Marcobay Construction, Inc. is not a Certified Woman or Minority Business Enterprise, we recognize the importance of diversity and are dedicated to supporting and empowering underrepresented groups in our field.

We understand that Polk County awards points for certified firms and we fully support that intent. While we are not eligible for those points as prime, we will meet or exceed County participation goals through W/MBE participation and suppliers.

### DOCUMENTATION

At trade award/GMP, we will submit valid W/MBE certificates for each participating firm from one of the County-recognized agencies, including:

- **Florida Minority Supplier Development Council (FMSDC)**
- **Women's Business Enterprise National Council (WBENC)**
- **State of Florida Office of Supplier Diversity (OSD)**
- **Florida Department of Transportation (FDOT)**
- **U.S. Small Business Administration (SBA)**
- **Federal Aviation Administration (FAA)**
- **Other Florida governmental agencies (case-by-case)**

### W/MBE PARTICIPATION PLAN

What you can count on:

- **Local outreach:** Use Polk County vendor lists and our database to invite certified firms to every trade; host pre-bid info sessions and one-on-one scope calls.
- **Transparent buyout:** Open-book leveling; award on best value with a focus on certified participation.
- **Mentor & support:** Help with insurance/bonding requirements, submittal templates, and schedule planning; prompt pay flow-downs.
- **Track & report:** Maintain a live W/MBE log (commitments, dollars invoiced/paid) and include it in monthly OAC reports; corrective action if pacing lags.





## TAB 7: Timely Completion of Projects

### Polk County BOCC - RFP 25-597

#### CURRENT & FUTURE WORKLOAD

Marcobay Construction maintains the resources and staff necessary to deliver multiple large-scale projects without compromising schedule or quality. Founded in Lakeland in 1974, Marcobay has grown to include a strong core team of Project Managers, Superintendents, Estimators, and field personnel supported by long-standing subcontractor partnerships.

Because more than 85% of our annual work comes from repeat clients, our pipeline is predictable and supported by long-term relationships. This allows us to align the right team with the right project at the right time.

#### DAILY ABILITY TO HANDLE SCOPE

Marcobay's project approach is built on daily, proactive coordination:

- **Project Manager** – Oversees day-to-day operations, subcontractor coordination, and communication with the Owner and Architect. Provides weekly updates to Polk County and ensures schedule adherence.
- **Superintendent** – Manages daily on-site operations, including subcontractor sequencing, logistics, and quality assurance. Responsible for enforcing safety protocols and maintaining productivity on the jobsite.
- **Estimator/Project Engineer** – Supports the team with buyout, cost tracking, ODP administration, and documentation.
- **QA/QC Manager** – Provides independent review of submittals, inspections, and compliance throughout construction.

Our staffing model ensures that each aspect of the project, from site development (\$3M allocation), to PEMB procurement/erection, to interior build-out and site amenities, has clear accountability. Daily field reports, weekly subcontractor meetings, and rolling three-week schedules ensure tasks are actively monitored and adjusted as needed.

#### STAFF CAPACITY

Marcobay has the depth to staff large projects while maintaining continuity across our portfolio. The team proposed for the Ag Center Complex have all successfully delivered CMAR projects of equal or greater complexity in Polk County.

Our field bench allows us to supplement resources during peak phases (utilities, PEMB erection, finishes) without impacting other projects. This flexibility, combined with our subcontractor base built over 50 years in Polk County, ensures daily workload demands are met without compromise.

#### COMMITMENT TO ON-TIME DELIVERY

Our track record speaks to our ability to finish projects on or ahead of schedule. For example, the Salvation Army Worship & Community Center was delivered in just 12 months on a fast-track schedule, and the Catapult 3.0 facility was completed on time despite complex site and utility requirements, as well as a worldwide pandemic.

For the Agricultural Center Complex, our focus on early procurement of long-lead items (PEMB, MEP equipment), concurrency between site and vertical work, and tight coordination with The Lunz Group ensures Polk County's timeline—including civil and permit drawings by December 28th—will be met.

## Survey Questionnaire – Polk County

### RFP 25-597, Construction Manager at Risk – New Agricultural Center Complex

To: Cody McGhee (Name of Person completing survey)  
City of Auburndale (Name of Client Company/Consultant)  
 Phone Number: 863-965-5545 Email: cmcghee@auburndalefl.com

Subject: Past Performance Survey of Similar work:

Project name: Lake Myrtle Sports Complex Expansion

Name of Vendor being surveyed: Marcobay Construction, Inc.

Cost of Services: Original Cost: \$5,606,575 Ending Cost: \$5,617,298

Contract Start Date: \_\_\_\_\_ Contract End Date: \_\_\_\_\_

**Rate each of the criteria on a scale of 1 to 10, with 10 representing that you were very satisfied (and would hire the Consultant /individual again) and 1 representing that you were very unsatisfied (and would never hire the Consultant /individual again). Please rate each of the criteria to the best of your knowledge. If you do not have sufficient knowledge of past performance in a particular area, leave it blank.**

NO	CRITERIA	UNIT	SCORE
1	Ability to manage cost	(1-10)	10
2	Ability to maintain project schedule (complete on-time/early)	(1-10)	10
3	Quality of workmanship	(1-10)	10
4	Professionalism and ability to manage	(1-10)	10
5	Close out process	(1-10)	10
6	Ability to communicate with Client's staff	(1-10)	10
7	Ability to resolve issues promptly	(1-10)	10
8	Ability to follow protocol	(1-10)	10
9	Ability to maintain proper documentation	(1-10)	10
10	Appropriate application of technology	(1-10)	10
11	Overall Client satisfaction and comfort level in hiring	(1-10)	10
12	Ability to offer solid recommendations	(1-10)	10
13	Ability to facilitate consensus and commitment to the plan of action among staff	(1-10)	10

Printed Name of Evaluator Cody McGhee

Signature of Evaluator: Cody McGhee

Please fax or email the completed survey to: smcintyre@marcobay.com



## Survey Questionnaire – Polk County

### RFP 25-597, Construction Manager at Risk – New Agricultural Center Complex

To: Ralph Frier (Name of Person completing survey)

Ridgeview Global Studies Academy (Name of Client Company/Consultant)

Phone Number: 863-419-3199 Email: ralph.frier@rgsa.com

Subject: Past Performance Survey of Similar work:

Project name: Ridgeview Global Studies Academy - New Middle School

Name of Vendor being surveyed: Marcobay Construction, Inc.

Cost of Services: Original Cost: \$8,308,00 Ending Cost: \$8,765,706

Contract Start Date: 1/3/2018 Contract End Date: 9/1/2018

Rate each of the criteria on a scale of 1 to 10, with 10 representing that you were very satisfied (and would hire the Consultant /individual again) and 1 representing that you were very unsatisfied (and would never hire the Consultant /individual again). Please rate each of the criteria to the best of your knowledge. If you do not have sufficient knowledge of past performance in a particular area, leave it blank.

NO	CRITERIA	UNIT	SCORE
1	Ability to manage cost	(1-10)	10
2	Ability to maintain project schedule (complete on-time/early)	(1-10)	10
3	Quality of workmanship	(1-10)	8
4	Professionalism and ability to manage	(1-10)	10
5	Close out process	(1-10)	10
6	Ability to communicate with Client's staff	(1-10)	10
7	Ability to resolve issues promptly	(1-10)	10
8	Ability to follow protocol	(1-10)	10
9	Ability to maintain proper documentation	(1-10)	10
10	Appropriate application of technology	(1-10)	10
11	Overall Client satisfaction and comfort level in hiring	(1-10)	10
12	Ability to offer solid recommendations	(1-10)	10
13	Ability to facilitate consensus and commitment to the plan of action among staff	(1-10)	10

Printed Name of Evaluator Ralph H. Frier

Signature of Evaluator: Ralph H. Frier

Please fax or email the completed survey to: smcintyre@marcobay.com

### Survey Questionnaire – Polk County

#### RFP 25-597, Construction Manager at Risk – New Agricultural Center Complex

To: Patrick Huston (Name of Person completing survey)

Carvana, LLC. (Name of Client Company/Contractor)

Phone Number: 480-213-1804 Email: patrick.huston@carvana.com

Total Annual Budget of Entity \_\_\_\_\_

Subject: Past Performance Survey of Similar work:

Project name: Carvana Vehicle Inspection Center

Name of Vendor being surveyed: Marcobay Construction, Inc.

Cost of Services: Original Cost: \$38,774,065.00 Ending Cost: \$41,074,065

Contract Start Date: 12/18/2019 Contract End Date: contract: 12/18/2020  
CO: 11/25/2020

**Rate each of the criteria on a scale of 1 to 10, with 10 representing that you were very satisfied (and would hire the Contractor /individual again) and 1 representing that you were very unsatisfied (and would never hire the Contractor /individual again). Please rate each of the criteria to the best of your knowledge. If you do not have sufficient knowledge of past performance in a particular area, leave it blank.**

NO	CRITERIA	UNIT	SCORE
1	Ability to manage cost	(1-10)	9
2	Ability to maintain project schedule (complete on-time/early)	(1-10)	10
3	Quality of workmanship	(1-10)	10
4	Professionalism and ability to manage	(1-10)	10
5	Close out process	(1-10)	9
6	Ability to communicate with Client's staff	(1-10)	10
7	Ability to resolve issues promptly	(1-10)	10
8	Ability to follow protocol	(1-10)	10
9	Ability to maintain proper documentation	(1-10)	9
10	Appropriate application of technology	(1-10)	10
11	Overall Client satisfaction and comfort level in hiring	(1-10)	10
12	Ability to offer solid recommendations	(1-10)	10
13	Ability to facilitate consensus and commitment to the plan of action among staff	(1-10)	10

Printed Name of Evaluator Patrick Huston

Signature of Evaluator: 

Please fax or email the completed survey to: smcintyre@marcobay.com

## Survey Questionnaire – Polk County

### RFP 25-597, Construction Manager at Risk – New Agricultural Center Complex

To: Jessica Lawson (Name of Person completing survey)  
Peace River Center (Name of Client Company/Consultant)  
 Phone Number: 863-519-0575 Email: jessica.lawson@peacrivercenter.org

Subject: Past Performance Survey of Similar work:

Project name: Peace River New Crisis Center

Name of Vendor being surveyed: Marcobay Construction, Inc.

Cost of Services: Original Cost: \$3,937,875 Ending Cost: \$3,582,875

Contract Start Date: \_\_\_\_\_ Contract End Date: 10/19/2017

**Rate each of the criteria on a scale of 1 to 10, with 10 representing that you were very satisfied (and would hire the Consultant /individual again) and 1 representing that you were very unsatisfied (and would never hire the Consultant /individual again). Please rate each of the criteria to the best of your knowledge. If you do not have sufficient knowledge of past performance in a particular area, leave it blank.**

NO	CRITERIA	UNIT	SCORE
1	Ability to manage cost	(1-10)	9
2	Ability to maintain project schedule (complete on-time/early)	(1-10)	8
3	Quality of workmanship	(1-10)	9
4	Professionalism and ability to manage	(1-10)	9
5	Close out process	(1-10)	6
6	Ability to communicate with Client's staff	(1-10)	9
7	Ability to resolve issues promptly	(1-10)	9
8	Ability to follow protocol	(1-10)	8
9	Ability to maintain proper documentation	(1-10)	7
10	Appropriate application of technology	(1-10)	9
11	Overall Client satisfaction and comfort level in hiring	(1-10)	9
12	Ability to offer solid recommendations	(1-10)	9
13	Ability to facilitate consensus and commitment to the plan of action among staff	(1-10)	9

Printed Name of Evaluator David F. Blackwelder, Project Manager

Signature of Evaluator: 

Please fax or email the completed survey to: smcintyre@marcobay.com

### Survey Questionnaire – Polk County

#### RFP 25-600, Construction Manager at Risk – Sheriff's Office/Polk County Joint- Use Warehouse & Facilities Management Administration Building

To: Laura Taylor (Name of Person completing survey)

Catapult Lakeland, Inc. (Name of Client Company/Contractor)

Phone Number: 863-687-3788 Email: ltaylor@lakelandcdc.com

Total Annual Budget of Entity \_\_\_\_\_

Subject: Past Performance Survey of Similar work:

Project name: Catapult 3.0

Name of Vendor being surveyed: Marcobay Construction, Inc.

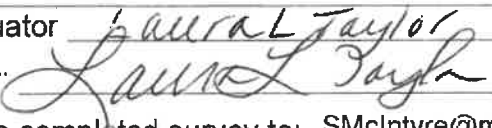
Cost of Services: Original Cost: \$6,568,427.25 Ending Cost: \$7,217,018

Contract Start Date: NOC 10/25/2018 Contract End Date: Shell COC - 6/5/2020  
Interior TCO - 3/8/2020

**Rate each of the criteria on a scale of 1 to 10, with 10 representing that you were very satisfied (and would hire the Contractor /individual again) and 1 representing that you were very unsatisfied (and would never hire the Contractor /individual again). Please rate each of the criteria to the best of your knowledge. If you do not have sufficient knowledge of past performance in a particular area, leave it blank.**

NO	CRITERIA	UNIT	SCORE
1	Ability to manage cost	(1-10)	10
2	Ability to maintain project schedule (complete on-time/early)	(1-10)	10
3	Quality of workmanship	(1-10)	10
4	Professionalism and ability to manage	(1-10)	10
5	Close out process	(1-10)	10
6	Ability to communicate with Client's staff	(1-10)	10
7	Ability to resolve issues promptly	(1-10)	10
8	Ability to follow protocol	(1-10)	10
9	Ability to maintain proper documentation	(1-10)	10
10	Appropriate application of technology	(1-10)	10
11	Overall Client satisfaction and comfort level in hiring	(1-10)	10
12	Ability to offer solid recommendations	(1-10)	10
13	Ability to facilitate consensus and commitment to the plan of action among staff	(1-10)	10

Printed Name of Evaluator Laura L Taylor

Signature of Evaluator: 

Please fax or email the completed survey to: SMcIntyre@marcobay.com

August 12, 2025

**POLK COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA**

**ADDENDUM #1**

**RFP 25-597, Construction Manager at Risk (CMAR) – New Agricultural Center Complex**

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This addendum is issued to clarify, add to, revise and/or delete items of the RFP Documents for this work. This Addendum is a part of the RFP Documents and acknowledgment of its receipt should be noted on the Addendum.

---

Contained within this addendum: Questions and answers.

*Tabatha Shirah*

Tabatha Shirah

Procurement Analyst

Procurement Division

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**This Addendum sheet should be signed and returned with your submittal. This is the only acknowledgment required.**

---

Signature: 

Printed Name: Jimmy Vessels

Title: President

Company: Marcobay Construction, Inc.

**RFP 25-597, Construction Manager at Risk (CMAR) – New Agricultural Center Complex**

**Addendum #1**

---

**Question 1:** Can the County allow us to submit Polk County Survey Questionnaires that were solicited and completed by our clients for previous Polk County RFP's?

**Answer 1:** 1) Yes, surveys from prior RFP submittals may be used if they meet the following criteria.

- i. The survey questions are the same
- ii. The scope of work of the prior RFP survey you are submitting is similar to the scope of the work of this RFP.
- iii. The survey submitted is for one of the projects identified under Tab 3.
- iv. If submitting a survey from a prior RFP, please manually strike through the RFP number and name on the top of the survey and write in the appropriate RFP number and name that matches the RFP you are submitting a proposal for.

**Question 2:** The RFP states that the proposal must be submitted in a 3-ring binder. Would Polk County accept a spiral-bound format instead, provided that all requested tabs and documentation are included and clearly organized?

**Answer 2:** Spiral-bound is acceptable format.

**Question 3:** 1) Electronic submissions via Kiteworks, are we still required to submit one original and five hard-copy binders, or may we submit only the electronic package? 2) The RFP lists separate Tabs in PDF format. Should we upload five individually labeled PDFs (e.g. "RFP 25-599 Tab 1.pdf"), or combine everything into one bookmarked PDF?

**Answer 3:** 1) For electronic submissions via Kiteworks, only the electronic package is required. Hard copies are required only for non-electronic submissions.  
2) Individual labeled PDF's for each Tab.

**Question 4:** Want to confirm that Exhibit 1 is not required to be included with each survey questionnaire, and that it is only provided as a reference for completing the top portion of the survey?

**Answer 4:** Exhibit 1 is detailed instructions on how to prepare and send performance surveys. It is not to be submitted with questionnaire.

**Question 5:** 1) Regarding Tab 6 of this RFP, please advise if proposers will be allocated points for inclusion of MBE sub-consultants.  
2) We've noticed several municipalities removing this particular qualification from the scoring criteria and our request is if the County would give any consideration to doing so?

**RFP 25-597, Construction Manager at Risk (CMAR) – New Agricultural Center Complex**  
**Addendum #1**

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**Answer 5:** 1) Yes proposers will be allocated points for women or minority business enterprises as defined in Tab 6 on page 10 & 11 of Bid Package.  
2) The County does not intend to remove this scoring criteria at this time.

**Question 6:** List of the contractors that attended the mandatory pre-bid meeting?

**Answer 6:** Attendance for the pre-proposal meeting is posted on the RFP's webpage. Which you can access at the following link: [www.polk-county.net/bid-form/rfp-25-597/](http://www.polk-county.net/bid-form/rfp-25-597/)

**Question 7:** Address for project site?

**Answer 7:** The site is located on County owned property at 2200 Homeland-Garfield Road, Bartow, Florida 33830.



## Proposers Incorporation Information

(Submittal Page)

The following section should be completed by all bidders and submitted with their bid submittal:

Company Name: Marcobay Construction, Inc.

DBA/Fictitious Name (if applicable): \_\_\_\_\_

TIN #: 59-1509590

Address: 3810 Drane Field Rd, Suite 16

City: Lakeland

State: Florida

Zip Code: 33811

County: Polk

Note: Company name must match legal name assigned to the TIN number. A current W9 should be submitted with your bid submittal.

Contact Person: Sara McIntyre

Phone Number: 863-680-2293 ext 216

Cell Phone Number: 863-670-1234

Email Address: SMcIntyre@marcobay.com

Type of Organization (select one type)

- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Non-Profit
- ☐ Sub Chapter
- ☐ Joint Venture
- ☒ Corporation
- ☐ LLC
- ☐ LLP
- ☐ Publicly Traded
- ☐ Employee Owned

State of Incorporation: Florida

The Successful vendor must complete and submit this form prior to award. The Successful vendor must invoice using the company name listed above.

## AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

SOLICITATION NO.: RFP 25-597, Construction Manager at Risk—New Agricultural Center Complex

POLK COUNTY WILL NOT INTENTIONALLY AWARD COUNTY CONTRACTS TO ANY CONSULTANT WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

POLK COUNTY MAY CONSIDER THE EMPLOYMENT BY ANY CONSULTANT OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY POLK COUNTY.

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND

SUBSEQUENT AMENDMENTS)  
Company Name: Marcobay Construction, Inc.

Signature: \_\_\_\_\_

Title: President

Date: July 22, 2025

State of: Florida

County of: Polk

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 22 day of July, 2025, by Jimmy Vessels (name) as President (title of officer) of Marcobay Construction, Inc. (entity name), on behalf of the company, who ☒ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.

Notary Public Signature: Sara Scoynes

Printed Name of Notary Public: Sara Scoynes

Notary Commission Number and Expiration: HH482188 1/17/2028

(AFFIX NOTARY SEAL)



SARA A. SCOYNES  
Notary Public  
State of Florida  
Comm# HH482188  
Expires 1/17/2028

**EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY) CERTIFICATION**

(Florida Statutes, Section 448.095)

PROJECT NAME: 25-597, Construction Manager at Risk--New Agricultural Center Complex

The undersigned, as an authorized officer of the contractor identified below (the "Contractor"), having full knowledge of the statements contained herein, hereby certifies to Polk County, a political subdivision of the State of Florida (the "County"), by and on behalf of the Contractor in accordance with the requirements of Section 448.095, Florida Statutes, as related to the contract entered into by and between the Contractor and the County on or about the date hereof, whereby the Contractor will provide labor, supplies, or services to the County in exchange for salary, wages, or other remuneration (the "Contract"), as follows:

1. Unless otherwise defined herein, terms used in this Certification which are defined in Section 448.095, Florida Statutes, as may be amended from time to time, shall have the meaning ascribed in said statute.

2. Pursuant to Section 448.095(5), Florida Statutes, the Contractor, and any subcontractor under the Contract, must register with and use the E-Verify system to verify the work authorization status of all new employees of the Contractor or subcontractor. The Contractor acknowledges and agrees that (i) the County and the Contractor may not enter into the Contract, and the Contractor may not enter into any subcontracts thereunder, unless each party to the Contract, and each party to any subcontracts thereunder, registers with and uses the E-Verify system; and (ii) use of the U.S. Department of Homeland Security's E-Verify System and compliance with all other terms of this Certification and Section 448.095, Fla. Stat., is an express condition of the Contract, and the County may treat a failure to comply as a material breach of the Contract.

3. By entering into the Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify 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 Contractor shall maintain a copy of such affidavit for the duration of the Contract. Failure to comply will lead to termination of the Contract, or if a subcontractor knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. If the Contract is terminated pursuant to Section 448.095, Fla. Stat., such termination is not a breach of contract and may not be considered as such. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If the Contract is terminated for a violation of Section 448.095, Fla. Stat., by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination. The Contractor shall be liable for any additional costs incurred by the County as a result of the termination of the Contract. Nothing in this Certification shall be construed to allow intentional discrimination of any class protected by law.

Executed this 22nd day of July, 2025.

ATTEST:

CONTRACTOR:

By: 

By: 

PRINTED NAME: Tammy Brend

PRINTED NAME: Jimmy Vessels

Its: Director of Operations

Its: President

**POLK COUNTY LOCAL BUSINESS TAX APPLICATION FORM****ACCOUNT NO. 29199****CLASS: B+****PAYMENT DUE BY: 09/30/2025**

<b>OWNER NAME</b>	<b>LOCATION</b>
<b>JIMMY L VESSELS</b>	<b>3700 DMG DR LAKELAND</b>
<b>BUSINESS NAME AND MAILING ADDRESS</b>	<b>CODE      ACTIVITY TYPE</b>
<b>MARCOBAY CONSTRUCTION</b> MARCOBAY CONSTRUCTION 3700 DMG DR LAKELAND, FL 33811	<b>230150      CONTRACTOR GENERAL</b>

**SIGN HERE****rhernandez@marcobay.com**SIGNATURE INDICATES APPLICANT READ AND UNDERSTANDS THE APPLICATION  
AFFIDAVIT ON THE BACK OF THE FORM AND AFFIRMS THE INFORMATION PROVIDED IS  
TRUE AND CORRECT.**AMOUNT DUE: 57.75****PAID - 3432582 07/23/2025 HSP****TP 57.75 MARCOBAY CONSTRUCTION****For Your Information: What You Need To Know About Tangible Personal Property**

Every individual or firm doing business and located in Polk County is also subject to the tangible personal property requirement.

An initial tangible personal property tax return is required to be filed with the Polk County Property Appraiser's Office by April 1st of the year after the business opens. The initial return is required if the business owns or leases any personal property, without regard to the value of that personal property. In subsequent years, however, no return is required unless the combined value of all business equipment is more than 25,000 dollars.

To file an initial tangible personal property tax return or for additional information, visit Polk County Property Appraiser's Office website, [polkpa.org](http://polkpa.org).

**POLK COUNTY LOCAL BUSINESS TAX RECEIPT****ACCOUNT NO. 29199****CLASS: B+****EXPIRES: 09/30/2026**

<b>OWNER NAME</b>	<b>LOCATION</b>
<b>JIMMY L VESSELS</b>	<b>3700 DMG DR LAKELAND</b>
<b>BUSINESS NAME AND MAILING ADDRESS</b>	<b>CODE      ACTIVITY TYPE</b>
<b>MARCOBAY CONSTRUCTION</b> MARCOBAY CONSTRUCTION 3700 DMG DR LAKELAND, FL 33811	<b>230150      CONTRACTOR GENERAL</b>

**PROFESSIONAL LICENSE (IF APPLICABLE)**  
**DBPR CBC047744****OFFICE OF JOE G. TEDDER, CFC \* TAX COLLECTOR**THIS POLK COUNTY LOCAL BUSINESS TAX RECEIPT MUST BE CONSPICUOUSLY  
DISPLAYED AT THE BUSINESS LOCATION**PAID - 3432582 07/23/2025 HSP****TP 57.75 MARCOBAY CONSTRUCTION**



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



**STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**CONSTRUCTION INDUSTRY LICENSING BOARD**

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE  
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

**SLIGH, ANTHONY DAVID**

MARCOBAY CONSTRUCTION, INC  
3700 DMG DR  
LAKELAND FL 33811

**LICENSE NUMBER: CGC1532260**

**EXPIRATION DATE: AUGUST 31, 2026**

Always verify licenses online at [MyFloridaLicense.com](http://MyFloridaLicense.com)

ISSUED: 07/29/2024

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.







Ron DeSantis, Governor

Melanie S. Griffin, Secretary



**STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**CONSTRUCTION INDUSTRY LICENSING BOARD**

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE  
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

**BUSING, BRIAN LEE**

MARCOBAY CONSTRUCTION, INC.  
4025 S PIPKIN ROAD  
LAKELAND FL 33811

**LICENSE NUMBER: CGC1532521**

**EXPIRATION DATE: AUGUST 31, 2026**

Always verify licenses online at [MyFloridaLicense.com](http://MyFloridaLicense.com)

ISSUED: 07/16/2024

Do not alter this document in any form.

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Ron DeSantis, Governor

Melanie S. Griffin, Secretary



**STATE OF FLORIDA**  
**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**CONSTRUCTION INDUSTRY LICENSING BOARD**

THE BUILDING CONTRACTOR HEREIN IS CERTIFIED UNDER THE  
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

**VESSELS, JIMMY LEE**

MARCOBAY CONSTRUCTION INC  
3700 DMG DRIVE  
LAKELAND FL 33811

**LICENSE NUMBER: CBC047744**

**EXPIRATION DATE: AUGUST 31, 2026**

Always verify licenses online at [MyFloridaLicense.com](http://MyFloridaLicense.com)

ISSUED: 08/02/2024

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.



**Request for Taxpayer  
Identification Number and Certification**

Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Give form to the  
requester. Do not  
send to the IRS.

**Before you begin.** For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See Specific Instructions on page 3.	<b>1</b> Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.) <b>MARCOBAY CONSTRUCTION, INC.</b>	
	<b>2</b> Business name/disregarded entity name, if different from above.	
	<b>3a</b> Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only <b>one</b> of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C corporation <input checked="" type="checkbox"/> S corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) . . . . . <b>Note:</b> Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions)	<b>4</b> Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____ (Applies to accounts maintained outside the United States.)
	<b>3b</b> If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions . . . . . <input type="checkbox"/>	
	<b>5</b> Address (number, street, and apt. or suite no.). See instructions. <b>3700 DMG Drive</b>	<b>Requester's name and address (optional)</b>
<b>6</b> City, state, and ZIP code <b>Lakeland, Florida 33811</b>		
<b>7</b> List account number(s) here (optional)		

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

<b>Social security number</b>									
			-				-		
<b>or</b>									
<b>Employer identification number</b>									
5	9	-	1	5	0	9	5	9	0

**Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

<b>Sign Here</b>	Signature of U.S. person 	Date <b>7/24/2025</b>
------------------	--	-----------------------

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

**What's New**

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they



July 24, 2025

Re: **Marcobay Construction, Inc.**

We are pleased to advise you that **Marcobay Construction, Inc.** has a surety relationship with **Liberty Mutual Insurance Company**, which carries an A.M. Best Rating of A XV and a Department of Treasury's Federal Register listing of \$1,897,231,000..

Based upon normal and standard underwriting criteria at the time of the request, we should be in a position to provide Performance and Payment Bonds when requested by Marcobay Construction, Inc. Their single job limit is \$50,000,000.00 with a \$100,000,000.00 aggregate work program. **Liberty Mutual Insurance Company** reserves the right to review bond issuance based on the underwriting criteria in effect at the time the bonds are requested; subject to acceptable contract terms, bond forms, and evidence of financing acceptable to both the Contractor and the Surety.

This letter is issued as a bonding reference. Neither we nor **Liberty Mutual Insurance Company** assume liability to any third party, including you, if bonds are not provided.

**Marcobay Construction, Inc.** maintains an excellent reputation of exceeding owner expectations by providing quality projects on time and within budget. We recommend them to you very highly and invite any additional inquiries you may have.

Sincerely,  
Liberty Mutual Insurance Company

A handwritten signature in blue ink, appearing to read "K Wojtowicz", with a stylized flourish at the end.

Kevin Wojtowicz  
Surety Specialist and Licensed Agent



## **EXHIBIT “B”**

### **PRE-CONSTRUCTION SERVICES ADDENDUM**

#### ***Construction Manager at Risk Services for New Agricultural Center Complex***

##### **I. Construction Team Representatives**

- County ..... Polk County
- The Board of County Commissioners
  - County Manager
  - Deputy County Manager
  - Facilities Management Division Director
- Construction Manager..... Marcobay Construction
- Jimmy Vessels, President
  - Tammy Brend, Administrative Assistant
  - Will Yancey, Senior Estimator
  - Sara McIntyre, Preconstruction Assistant
  - Reyna Hernandez, Project Accountant

##### **II. Pre-Construction Phase Services – See Attachment to Exhibit B (3 pages)**

##### **III. Omitted Services as previously included in Article 2 of the Agreement**

1. N/A unless otherwise noted.

##### **IV. Construction Manager’s Staff Positions to be assigned to the Pre-Construction/Design Phases**

Position	Name	Duration in Months	Percentage of Time Assigned
Project Executive/Sr. Project Manager	Jimmy Vessels	See Attached	7%
Senior Estimator	Will Yancey	See Attached	44%
Preconstruction Assistant	Sara McIntyre	See Attached	37%
Administrative Assistant	Tammy Brend	See Attached	6%
Project Accountant	Reyna Hernandez	See Attached	5%

##### **V. Construction Manager’s Fee for project (based on estimated construction budget of \$18.5M) - 4%.**





November 24, 2025

Mr. Keith Tate  
Polk County Facilities Management  
2160 Marshall Edwards Dr  
Bartow, FL 33830

Re: Polk County BoCC Agricultural Center  
Pre-Construction Services Proposal

Dear Mr. Tate,

On behalf of Marcobay Construction, thank you for selecting us to partner with Polk County on the new Agricultural Center at 2200 Homeland-Garfield Road. We are pleased to provide our preconstruction fee proposal for your consideration and are eager to begin moving the project toward a successful groundbreaking.

#### **SCOPE OF PRE-CONSTRUCTION SERVICES**

Marcobay Construction will provide comprehensive Construction Manager at Risk (CMAR) pre-construction services consistent with RFP 25-297 and the CMAR Agreement. Our team will support Polk County and The Lunz Group from current design through GMP development, using an open-book, highly collaborative approach to cost control, constructability, and scheduling.

Due to the nature of the CCNA process and the limitations of the cone of silence, our best understanding is that the design has progressed beyond 50%. With this in mind, our team will begin by verifying the current documents and adjusting our level of effort to align with the project's actual status.

Our services will include constructability reviews, budget estimating at the DD and CD milestones, value engineering, scheduling, market outreach, subcontractor prequalification, competitive bidding, sealed bid compliance, and GMP assembly with full cost transparency.



### INITIAL CONSTRUCTABILITY REVIEW AND MARKET ANALYSIS

Our team will review the most current design documents and evaluate the site for constructability. We will verify availability of materials and equipment based on current market conditions and obtain preliminary vendor quotes for anticipated long-lead items. We will also prepare a preliminary estimate and assist with identifying early-release opportunities.

<b>Schematic / Initial Constructability Analysis Rates</b>	<b>Proposed Hours</b>	<b>Cost per Hour</b>	<b>Total Cost</b>
Senior Estimator	80	\$102/hr	\$8,160
Preconstruction Assistant/Bid Clerk	60	\$55/hr	\$3,300
Senior Project Manager/Project Executive	10	\$157/hr	\$1,570
Project Coordinator/Administrative Assistant	12	\$55/hr	\$660
<b><i>Initial Constructability Analysis Estimate:</i></b>			<b><i>\$13,690</i></b>

### DESIGN DEVELOPMENT COST ESTIMATE

Our team will work with the design team to refine scope, identify value-engineering opportunities, and update the project schedule accordingly. During this phase, we will develop the DD-level cost estimate, a preliminary schedule, refresh pricing on key materials, and begin packaging trade-specific bid scopes in preparation for Construction Documents.

<b>Design Development Rates</b>	<b>Proposed Hours</b>	<b>Cost per Hour</b>	<b>Total Cost</b>
Senior Estimator	100	\$102/hr	\$10,200
Preconstruction Assistant/Bid Clerk	80	\$55/hr	\$4,400
Senior Project Manager/Project Executive	10	\$157/hr	\$1,570
Project Coordinator/Administrative Assistant	12	\$55/hr	\$660
<b><i>Design Development Cost Estimate:</i></b>			<b><i>\$16,830</i></b>

### CONSTRUCTION DOCUMENTS / GMP DEVELOPMENT

Once scope clarifications are finalized, we will complete the bid packages and publicly advertise the subcontractor bidding opportunity for a minimum of 30 days to ensure broad participation. We will prequalify all interested firms and require sealed bids for all quotes over \$50,000. After receipt, we will verify scope alignment, evaluate schedule impacts, and compile the complete bid tabulation. Working with the County, we will assemble and present the Guaranteed Maximum Price (GMP).



<b>CD/GMP Development Rates</b>	<b>Proposed Hours</b>	<b>Cost per Hour</b>	<b>Total Cost</b>
Senior Estimator	200	\$102/hr	\$20,400
Preconstruction Assistant/Bid Clerk	180	\$55/hr	\$9,900
Senior Project Manager/Project Executive	40	\$157/hr	\$6,280
Project Coordinator/Administrative Assistant	30	\$55/hr	\$1,650
Project Accountant	40	\$110/hr	\$4,400
Advertising Allowance			\$1,000
<b>CD/GMP Development Cost Estimate:</b>			<b>\$43,630</b>
Reimbursable Allowance (Per Ex J – Reimbursable Cost Schedule)			\$6,000
<b>TOTAL PRECONSTRUCTION SERVICES</b>			<b>\$80,150</b>

#### **CONSTRUCTION MANAGEMENT FEE PERCENTAGE**

Marcobay Construction proposes an overall Construction Management Fee of 4% to be applied in accordance with the CMAR Agreement. This percentage is submitted for review and negotiation as requested by Polk County Facilities Management.

The above services and associated hours may be adjusted as necessary to reflect actual design progress, site and utility conditions, or County-directed changes encountered during preconstruction. Any unnecessary portions of the service will be credited back to the County as the end of the preconstruction phase.

Thank you for the opportunity to serve Polk County on this significant community investment. Should you have any questions, please do not hesitate to contact us. We look forward to working with you soon.

Sincerely,

Jimmy Vessels, President  
Marcobay Construction, Inc.

## EXHIBIT "C"

### GMP ADDENDUM

to

#### Agreement between Polk County and Construction Manager At Risk

#### *New Agricultural Center Complex*

Pursuant to the Master Services Agreement (the "Agreement") dated \_\_\_\_\_ between Polk County, a political subdivision of the State of Florida (the "County") and \_\_\_\_\_ (the "Construction Manager"), with respect to the Project, as identified and described in the Pre-Construction Addendum, the County and the Construction Manager hereby establish a Guaranteed Maximum Price (GMP), Contract Time for the Work and amend the Agreement as set forth below.

1. The Construction Manager's (GMP) for the Work as defined in Section 6.1.3 and the Construction Manager's Fee as defined in Section 6.1.2, for the Construction Phase Services is \_\_\_\_\_.

2. This price is for the performance of the Work in accordance with the Schedules listed below and attached to this Addendum as follows:

- Schedule 1 Construction Manager's Personnel.
- Schedule 2 Contract Drawings & Specifications.
- Schedule 3 GMP Bid Breakdown.
- Schedule 4 Clarifications, Assumptions, Exclusions and Allowances.

3. Pursuant to Article 2, Section 2.5, the Project critical dates are as follow:

- A. Construction Phase Commencement Date: Date Stated in the Notice To Proceed
- B. Project Substantial Completion Date \_\_\_\_\_ Calendar days from Notice to Proceed
- C. Project Final Completion Date \_\_\_\_\_ Calendar days after Substantial Completion

4. In the event the Construction Manager does not achieve Substantial Completion within the Contract Time, including approved extensions, the Construction Manager shall pay the County, as liquidated damages and not as a penalty, the sum of \_\_\_\_\_ per day for each calendar day the actual time of performance exceeds the authorized Contract Time.

5. The Construction Manager shall not be due any additional Construction Phase Fee on increases in the GMP that do not exceed a cumulative total of \_\_\_\_\_. Should the GMP be increased by more than \_\_\_\_\_ under the terms of Article 7 hereinafter due to no fault of the Construction Manager, the Construction Manager's additional Construction Phase Fee will be 4% percent of that portion of the accumulative increases in the GMP that exceed the GMP by more than \_\_\_\_\_.

6. The Construction Manager's Fee for overhead, profit and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the construction phase, shall be 4% of the cost of work, as defined under section 6.1.3, and contingency. The Construction Manager's Fee shall be converted to a fix amount upon acceptance of the GMP, subject to changes as described herein, and shall be paid proportionally to the ratio of the work in place, including stored materials (see Article 8.1.3), as it bears on the latest estimate of the total construction cost and/or to the GMP, whichever is less.

7. Pursuant to Section 6.1.3.2.2, the cost of the premiums for all insurance and cost of premiums for all bonds, which the Construction Manager is required to procure by this Agreement specifically for the construction project. General Liability will be cost at a fixed rate of \_\_\_\_\_% of the final Contract Amount and Construction Manager bonds will be cost at a fixed rate of \_\_\_\_\_%. The premium stated will be substantiated with industry standard documentation. The cost of the work shall include any subcontractor bonds the Construction Manager deems appropriate. There shall

be no Construction Manager Overhead and profit fee on this item.

IN WITNESS WHEREOF, the parties have caused this amendment to be executed by their duly authorized representatives, as of the effective date.

**POLK COUNTY, a political subdivision of the  
State of Florida**

ATTEST:

STACY M. BUTTERFIELD, Clerk

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Martha Santiago, Ed.D., Chair  
Board of County Commissioners

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

Approved as to form and legal sufficiency:

\_\_\_\_\_  
County Attorney's Office

Attest:

\_\_\_\_\_  
Corporate Secretary

Marcobay Construction, Inc.  
a Florida profit corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_



## SCHEDULE 1 to the GMP ADDENDUM

### *New Agricultural Center Complex*

### Construction Manager's Personnel During Construction Phase

**(TO BE COMPLETED AT GMP)**

[illegible]

# **SCHEDULE 2 to the GMP ADDENDUM**

*New Agricultural Center Complex*

**Contract Drawings & Specifications**

# **SCHEDULE 3 to the GMP ADDENDUM**

*New Agricultural Center Complex*

**GMP Bid Breakdown**

# **SCHEDULE 4 to the GMP ADDENDUM**

*New Agricultural Center Complex*

**Clarifications, Assumptions, Exclusions and Allowances**

# **EXHIBIT “D”**

*New Agricultural Center Complex*

**Certificate of Substantial Completion**

Standard AIA Document G704 to be used



## EXHIBIT "E"

### *New Agricultural Center Complex*

#### **RELEASE AND AFFIDAVIT**

STATE OF FLORIDA  
COUNTY OF Polk County

Before me, the undersigned authority, personally appeared \_\_\_\_\_, who after being duly sworn, deposes and says:

(1) In accordance with the Contract Documents and in consideration of \$ \_\_\_\_\_ paid, \_\_\_\_\_ ("Construction Manager") releases and waives for itself and its subcontractors, materialmen, successors and assigns, all claims, demands damages, costs and expenses, whether in contract or in tort, against the Polk County Board of County Commissioners, a body corporate existing under the laws of the State of Florida ("County") relating in any way to the performance of the Agreement between Construction Manager and County, dated \_\_\_\_\_, 20\_\_, for the period from \_\_\_\_\_ to \_\_\_\_\_.

(2) Construction Manager certifies for itself and its subcontractors, materialmen, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for which County might be sued or for which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid.

(3) Construction Manager agrees to indemnify, defend, and save harmless County from all demands or suits, actions, claims of liens or other charges filed or asserted against County arising out of the performance by Construction Manager of the Work covered by this Release and Affidavit.

(4) Construction Manager certifies that it has paid all its subcontractors and materialmen in full all amounts owed them from any previous payments received by Construction Manager from County and has not withheld any such amounts. In the event Construction Manager withholds any unpaid amounts due to its subcontractors and/or materialmen from the payment it receives from County with respect to the Application for Payment referenced in Paragraph 5 below, Construction Manager agrees to immediately refund all such unpaid amounts to County.

(5) This Release and Affidavit is given in connection with Construction Manager's [monthly/final] Application for Payment No. \_\_\_\_\_.

**Construction Manager:**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
**Witnesses**

[Corporate Seal]

**STATE OF** \_\_\_\_\_  
**COUNTY OF** \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name) as \_\_\_\_\_ (title of officer) of \_\_\_\_\_ (entity name), on behalf of the company, who ☐ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_

My Commission Expires \_\_\_\_\_

## **EXHIBIT “F”**

*New Agricultural Center Complex*

### **Application for Payment**

Form shall be AIA Document G702 Application and Certificate for Payment

## **EXHIBIT “G”**

### *New Agricultural Center Complex*

#### **Final Payment Request Check List/ Certificate of Final Completion**

##### Items to be submitted with Construction Manager’s Request for Final Payment

- \_\_\_ 1. Pay Request (1 copy with original signatures and original seals, noted as FINAL)
- \_\_\_ 2. Final Schedule of Contract Values
- \_\_\_ 3. Consent of Surety to make Final Payment (signed and sealed)
- \_\_\_ 4. Power of Attorney from Surety for Release of Final Payment (signed, sealed and dated same as Consent of Surety)
- \_\_\_ 5. Affidavit of Contract Completion (**Exhibit “E”**)
- \_\_\_ 6. Satisfactory Conclusion or Release of Lien from all Subcontractors or laborers who have filed Intent to Lien or have indicated non-payment from the Contractor
- \_\_\_ 7. Construction Manager’s Guarantee of Construction for one (1) year from the date of Substantial Completion
- \_\_\_ 8. Copy of the approval by the Architect/Engineer and the transmittal to the County of Manuals, Shop Drawings, As-Builts (one electronic media and two sets of prints), brochures, warranties, and list of Subcontractors with telephone numbers and addresses
- \_\_\_ 9. Verification that County’s personnel have been trained in the operation of their new equipment, attendance lists and videos
- \_\_\_ 10. Other special Warranties are required by Specifications in the name of the County

## EXHIBIT "G"

### *New Agricultural Center Complex*

#### CERTIFICATE OF FINAL COMPLETION

Project: \_\_\_\_\_ County's Project No.: \_\_\_\_\_

Contract No.: \_\_\_\_\_ Contract Date: \_\_\_\_\_

Notice to Proceed Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_

The Work to which this Certificate applies has been inspected by the authorized representatives of the County, Construction Manager and Professional; and that Work is hereby declared to be finally complete in accordance with the Contract Documents on \_\_\_\_\_. This Certificate of Final Completion applies to all Work under the Contract Documents.

All punch list items have been completed and corrected for compliance with Contract Documents. This Certificate constitutes acceptance of Work as specified and intended in the Contract Documents. Construction Manager retains responsibility and obligation to the County for warranty Work arising after admission and acceptance of final completion. Signatories agree the project is finally complete as of the date of signature such that the project is in complete compliance with Contract Documents and authorized Change Orders.

Construction Manager: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Typed Name & Title)

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

Professional: \_\_\_\_\_  
(Authorized Signature)

By: \_\_\_\_\_  
(Typed Name & Title)

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

County: \_\_\_\_\_  
(Division Director)

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





## EXHIBIT "H"

### CHANGE ORDER

CHANGE  
ORDER

County \_\_\_\_\_  
Engineer \_\_\_\_\_  
Contractor \_\_\_\_\_

PROJECT:

CHANGE ORDER NO:

POLK COUNTY, A POLITICAL SUBDIVISION OF  
THE STATE OF FLORIDA

INITIATION DATE:

TO CONTRACTOR:

PROJECT NO:  
CONTRACT DATE:

The contract is changed as follows:

The original (Contract Sum) (Guaranteed Maximum Price) was	\$
Net Change by previously authorized Change Orders	\$
The (Contract Sum) (Guaranteed Maximum Price) prior to this change order was	\$
The (Contract Sum) (Guaranteed Maximum Price) will be (increased) (decreased) (unchanged) by this Change Order in the amount of	\$
The new (Contract Sum) (Guaranteed Maximum Price) including this Change Order will be	\$
The Contract Time will be (increased) (decreased) (unchanged) by	( ) days
The date of Substantial Completion as of date of this Change Order therefore is: _____	

_____ ARCHITECT/ENGINEER	_____ CONTRACTOR	<u>Board of County Commissioners</u> COUNTY
_____ ADDRESS	_____ ADDRESS	<u>330 West Church Street</u> ADDRESS
_____	_____	<u>Bartow, FL 33830</u>
By _____	By _____	By _____ Chair/Vice Chair
		Or _____ County Manager/Deputy County Manager
Date _____	Date _____	Date _____

**To the Contractor: Your acceptance of this Change Order shall constitute a modification to our agreement and will be performed subject to all of the same terms and conditions as contained in our Agreement indicated above, as fully as if the same were repeated in this acceptance. The adjustment, if any, to the agreement shall constitute a full and final settlement of any and all claims arising out of or related to the change set forth herein, including claims for impact and delay costs.**



**EXHIBIT "I"**  
ALLOWANCE AUTHORIZATION RELEASE (AAR)

**PROJECT:**

**AAR NO:**

POLK COUNTY,  
A POLITICAL SUBDIVISION OF  
THE STATE OF FLORIDA

**CONTRACT NO:**

**INITIATION DATE:**

**CONSTRUCTION MANAGER:**

**ARCHITECT/ENGINEER:**

**DESCRIPTION OF ALLOWANCE WORK:**

Reason for change:

**\*Not valid until signed by the County, Architect/Engineer and Construction Manager.**

Amount of Allowance Authorization included in this Contract is \_\_\_\_\_ \$

Amount of Allowance Authorization used to date \_\_\_\_\_ \$

Amount of Allowance Authorization used this AAR \_\_\_\_\_ \$

Balance of remaining AAR \_\_\_\_\_ \$

Original Contract Time \_\_\_\_\_ days

Amount of the Allowance Authorization time included in this Contract is \_\_\_\_\_ days

Amount of the Allowance Authorization time used to date \_\_\_\_\_ days

Amount of the Allowance Authorization time used this AAR \_\_\_\_\_ days

Balance of remaining Allowance Authorization Time is \_\_\_\_\_ days

Date of Substantial Completion therefore is \_\_\_\_\_

**(THE TOTAL ORIGINAL CONTRACT AMOUNT REMAINS UNCHANGED)**

**CONSTRUCTION  
MANAGER:** \_\_\_\_\_

**ARCHITECT/  
ENGINEER:** \_\_\_\_\_

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

**COUNTY:** \_\_\_\_\_

County Manager or Designee

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



## **EXHIBIT “J”**

### **REIMBURSABLE COST SCHEDULE**

1. Subcontractor Services Actual Costs
2. Travel Expenses In accordance with Chapter 112.061, F.S.;  
and further defined in the Polk County Employee Handbook
7. Pre-approved Equipment Actual Costs  
(includes purchase and rental of equipment used in project)



**Exhibit K - Hourly Rate Schedule**  
**Polk County Agricultural Center**

Company Name: Marcobay Construction

Classification	Raw Labor Rate	Rates with Burden
Field Operations Manager	\$93/hour	\$146/hour
Superintendent	\$54/hour	\$85/hour
Senior Estimator	\$65/hour	\$102/hour
Preconstruction Assistant/Bid Clerk	\$35/hour	\$55/hour
Project Executive/Senior Project Manager	\$100/hour	\$157/hour
Project Manager	\$75/hour	\$118/hour
Project Coordinator/ Administrative Assistant	\$35/hour	\$55/hour
Project Accountant	\$70/hour	\$110/hour

## EXHIBIT "L"

### AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

SOLICITATION NO.: RFP 25-597      PROJECT NAME: CMAR - New Agricultural Center Complex

POLK COUNTY WILL NOT INTENTIONALLY AWARD COUNTY CONTRACTS TO ANY PARTY WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

POLK COUNTY MAY CONSIDER A CONTRACTING PARTY'S EMPLOYMENT OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY POLK COUNTY.**

THE UNDERSIGNED ATTESTS THAT THE COMPANY IS FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_ (name) as \_\_\_\_\_ (title of officer) of  
\_\_\_\_\_ (entity name), on behalf of the company, who ☐ is personally known  
to me or ☐ has produced \_\_\_\_\_ as identification.

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_

My Commission Expires \_\_\_\_\_

**EXHIBIT M**  
**PUBLIC CONSTRUCTION BOND**  
**FRONT PAGE**  
**F.S. CHAPTER 255.05**

BOND NO.: \_\_\_\_\_

CONTRACTOR NAME: \_\_\_\_\_

CONTRACTOR ADDRESS: \_\_\_\_\_

CONTRACTOR PHONE NO: \_\_\_\_\_

SURETY COMPANY: \_\_\_\_\_

OWNER NAME: Polk County, a political subdivision of the State of Florida

OWNER ADDRESS: 330 W. Church St

Bartow, FL 33830

OWNER PHONE NO: (863) 534-6757

OBLIGEE NAME: (if  
contracting entity is different  
from the owner, the contracting  
public entity) \_\_\_\_\_

OBLIGEE ADDRESS: \_\_\_\_\_

OBLIGEE PHONE NO: \_\_\_\_\_

BOND AMOUNT: \$ \_\_\_\_\_

CONTRACT NUMBER: \_\_\_\_\_

GENERAL DESCRIPTION  
OF PROJECT: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_



## PUBLIC CONSTRUCTION BOND

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, located at \_\_\_\_\_ (Business Address) are held and firmly bound unto Polk County, a political subdivision of the State of Florida, as Oblige in the sum of \_\_\_\_\_ in lawful currency of the United States, for the payment whereof we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract executed between Principal and County for construction of \_\_\_\_\_, the Contract being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1) Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided in the Contract; and
3. Pays County all losses, damages, expenses, costs, liquidated damages, and attorney fees, including appellate proceedings, that County sustains because of a default by Principal under the Contract; and
4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void, otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the Contract Documents and compliance or non-compliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this bond.

Reference is hereby made to Section 255.05 Florida Statutes, and to the notice and time limitation provisions thereof:

IN WITNESS WHEREOF, this instrument is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

ATTEST:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

PRINCIPAL:

BY: \_\_\_\_\_ (SEAL)  
Authorized Signature (Principal)

Printed Name

Title of Person Signing Above

ATTEST:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

SURETY:

Printed Name

BY: \_\_\_\_\_ (SEAL)  
Attorney in Fact

Printed Name

Business Address



**EXHIBIT "N"**  
**BUY-OUT ALLOWANCE AUTHORIZATION RELEASE (BOAAR)**

**PROJECT:** \_\_\_\_\_

**BOAAR NO:** \_\_\_\_\_

POLK COUNTY,  
A POLITICAL SUBDIVISION OF  
THE STATE OF FLORIDA

**CONTRACT NO:** \_\_\_\_\_

**INITIATION DATE:** \_\_\_\_\_

**CONSTRUCTION MANAGER:** \_\_\_\_\_

**ARCHITECT/ENGINEER:** \_\_\_\_\_

**DESCRIPTION OF ALLOWANCE WORK:**

**Total:** \_\_\_\_\_ \$

**\*Not valid until signed by the County, Architect/Engineer and Construction Manager.**

Amount of Original Buy-out Allowance	_____	\$
Amount of Other Buy-out Authorization Release Credits	_____	\$
Amount of Other Buy-out Authorization Release Expenses	_____	\$
Amount of Buy-out Remaining Balance	_____	\$
Amount of Buy-out Credit in this BOAAR	_____	\$
Amount of Buy-out Allowance used this BOAAR	_____	\$
Amount of New Buy-out Allowance Remaining	_____	\$

**(THE TOTAL ORIGINAL CONTRACT AMOUNT REMAINS UNCHANGED)**

**CONSTRUCTION  
MANAGER:** \_\_\_\_\_

**ARCHITECT/  
ENGINEER:** \_\_\_\_\_

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

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

**COUNTY:** \_\_\_\_\_  
County Manager/Deputy County Manager

\_\_\_\_\_,Chair  
Board of County Commissioners

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

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