

**Guaranteed Maximum Price Amendment to  
Contract between Owner and Construction Manager  
For the Florida Senate Capitol Building 3rd Floor HVAC Replacement & Interior Renovations**

Pursuant to the Contract between Owner and Construction Manager for the Florida Senate Capitol Building 3rd Floor HVAC Replacement & Interior Renovations, the Parties agree to amend the Contract to establish a Guaranteed Maximum Price (GMP). The GMP is the amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work.

The Contract Sum is guaranteed by the Construction Manager not to exceed Four Million, One Hundred Thirty-Nine Thousand, Six Hundred Eighty-Five dollars (\$4,139,685), subject to additions and deductions by Change Order as provided in the Contract.

Attached hereto are the following documents included in this GMP Amendment and upon which the GMP Amendment is based:


- Section 1: Project Summary
- Section 2: Clarifications
- Section 3: Detailed Estimate
- Section 4: Schedule
- Section 5: List of Documents

The date to mobilize and begin work is March 18, 2024.



The date of Substantial Completion is September 9, 2024.

Executed by the Parties below:

Allstate Construction, Inc.

  
\_\_\_\_\_  
By: SCOTT BREWER, PRESIDENT  
Date: 11.21.23

The Florida Senate

  
\_\_\_\_\_  
By: Raymond D. Payne, Deputy Chief of Staff  
Date: 8 Dec 2023  
Legal Review  
By:   
Date: 11/21/23

352308

**Contract Between Owner and Construction Manager for the Senate Capitol Complex Renovations**

This "Contract" is by and between the Florida Senate ("Senate" or "Owner") and Allstate Construction, Inc., 5718 Tower Road, Tallahassee, FL 32303 ("Construction Manager" or "CM"), together collectively known the "Parties":

WHEREAS, the Senate is in need of construction management services for a minor renovation project for the Senate in the Capitol Complex, including the Capitol Building 3<sup>rd</sup> Floor HVAC replacement and interior renovations (the "Project").

WHEREAS, the Senate has entered into a contract with Hicks Nation Architects, Inc. (the "Architect"), to provide architectural, consulting, and construction administration services for the Project;

WHEREAS, the Construction Manager submitted a proposal to a competitive solicitation released by Florida Department of Management Services ("DMS") and was awarded a Statewide Continuing Contract for Construction Management Services Agreement between Construction Manager and DMS for minor construction projects estimated to be less than \$4 million (the "DMS Agreement"). The DMS Agreement is in effect through January 20, 2024.

WHEREAS, the law allows other governmental entities to access the DMS Agreement and allows those governmental entities to contract directly for services at the terms and conditions contained therein as an independent agreement amongst those parties;

WHEREAS, 6.4.3(2), *Joint Policies and Procedures of the Presiding Officers* (2018), allows for the use of the DMS Agreement for the purchase of construction management services as an exemption from a formal competitive solicitation as it is a purchase from contracts approved by any other governmental unit in the State of Florida;

NOW THEREFORE, for good and valuable consideration and of the mutual promises and representations set forth herein, the Senate and the Construction Manager enter into this Contract for construction management services pursuant to the DMS Agreement, and agree as follows:

## **Definitions**

Terms capitalized are those which are specifically defined herein, as follows:

“Construction Documents” means those drawings, specifications, and other supplemental instructions provided by the Architect regarding the Project.

“Construction Team” means the CM, the Owner, and the Architect who will work cooperatively as a team through construction completion. The CM will provide leadership to the Construction Team on all matters relating to construction and the Architect will provide leadership to the Construction Team on all matters relating to design.

“Contract Documents” consist of this Contract, Drawings, Specifications, and duly authorized and executed amendments between the Parties, all of which form the Contract and are as fully a part of the Contract as if attached hereto. Upon the Owner’s acceptance of the CM’s Guaranteed Maximum Price Proposal, defined herein below, the Contract Documents will also include the Guaranteed Maximum Price Amendment (defined further herein and referred to as the “GMP Amendment”).

“Contract Sum” means the “Cost of the Work,” defined herein below, plus the “CM Fee,” as defined herein below.

“Drawings” are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, diagrams, and architectural supplemental instructions.

“Specifications” are those portions of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, construction standards, and workmanship for the Work and performance of related services.

“Subcontractor” is a person or entity who has a direct contract with the CM to perform a portion of the Work.

“Work” means the construction and services required herein and includes all other labor, materials, equipment and services provided or to be provided by the CM to fulfill the CM’s obligations under the Contract.

### **Contract Documents and Order of Precedence**

This Contract is issued under the authority found in the DMS Agreement, as described above. This Contract should be read harmoniously and in conjunction with that DMS Agreement. In the event of a conflict between the DMS Agreement and this Contract, this Contract shall take precedence.

### **Project**

The CM will provide all services necessary for the Capitol Building 3<sup>rd</sup> Floor HVAC replacement and interior renovations.

### **Contract Term**

This Contract is effective upon the last day of execution by the Parties and will extend through the completion of the Project and any applicable warranty period of the Work. This period of time, as so defined, constitutes the “Contract Term.”

### **Architect as Project Manager**

The Senate has hired Hicks Nation Architects, Inc. to function as the Project Manager (“PM”), and to represent the Owner during the Contract Term. The Architect will provide administration of the Contract and will be the Owner’s representative during construction and throughout the warranty period. The Architect will have authority to act on behalf of the Owner as provided herein.

The Architect will visit the Project Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine if the Work is being performed in accordance with the Contract. The Architect will perform intensive construction administration which will include weekly meetings, observations, and/or inspections of the Project during the Construction Phase of the Work, as defined herein below. The Architect will provide, on a daily basis if needed, interpretations and clarifications regarding the Drawings.

The Architect is not responsible for construction means, methods, techniques, or procedures. Nor is the Architect responsible for safety precautions or programs as those are solely the CM’s responsibility.

The Owner and the CM shall communicate through the Architect.

The Architect will interpret and decide matters concerning performance under the Contract, as

provided herein, and on the written request of the Owner or the CM.

### **Scope of Services**

The Construction Manager's services include preconstruction and construction services for the Project.

- **Preconstruction Phase**

These services include:

1. Review design during the development of Drawings. The CM shall advise on site use and improvements; selection of materials, building systems, and equipment; and methods of Project delivery. The CM shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation, and construction, and factors related to cost, including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.
2. Project Schedule. The CM shall provide to the Architect and the Owner an electronic Project Schedule that coordinates and integrates the CM's services, the Architect's services, and the Owner's responsibilities with anticipated construction schedules. The CM shall update this schedule periodically.
3. Construction Cost. The CM shall prepare for the Owner's approval a detailed estimate of Construction Cost, in electronic format, developed by using estimating techniques, which anticipates the various elements of the Project and is based on the Drawings prepared by the Architect. The CM shall update and refine this estimate periodically as the Architect prepares the Construction Documents, and the CM shall advise the Owner and the Architect if it appears that the Construction Cost may exceed the Project budget.
4. Coordinate Contract Documents. The CM shall consult with the Owner and the Architect regarding Drawings and Specifications as they are being prepared, and recommend alternative solutions whenever design details affect construction feasibility, cost, or schedules.

5. Construction Schedule. The CM shall develop a Project Construction Schedule providing for all major elements such as phasing of construction and times of commencement and completion required of each Subcontractor. The CM shall provide the Project Construction Schedule for each set of bidding documents and develop a plan for the phasing of construction. The CM shall establish a schedule for the purchase of materials and equipment requiring long lead-time procurement. The CM shall also coordinate the schedule with the preparation of portions of the Contract Documents prepared by the Architect. The CM shall expedite and coordinate delivery of these purchases.

The CM shall advise the Owner and the Architect as to the separation of the Project into contracts for various categories of Work. The CM shall provide analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The CM shall develop bid packages designed to minimize adverse effects of labor shortages. The CM shall make recommendations for prequalification criteria for bidders, develop bidders' interest in the Project, and establish bidding schedules.

6. Weekly Meetings. The CM shall schedule and conduct weekly meetings of the Construction Team and promptly prepare and distribute minutes of those meetings to the Construction Team.
7. Guaranteed Maximum Price ("GMP"). Based upon Drawings and Specifications produced by the Architect, the CM shall develop a GMP Proposal(s), including the Project Construction Schedule, itemized by Subcontractor, for phases of Work as required by the Owner. All assumptions made by the CM in the development of the GMP Proposal(s) shall be specifically listed in the GMP Proposal(s), and the GMP will not be adjusted due to assumptions made by the CM that are not included in the GMP Proposal(s). If the GMP Proposal is accepted by the Owner, an Amendment to this Contract will be executed which will establish the GMP, Contract Term, and liquidated damages for each phase of the Work (the "GMP Amendment"). Performance and Payment Bonds, as defined herein below, will be executed simultaneously with the

GMP Amendment. If the GMP Proposal is not accepted by the Owner, the Owner will notify the CM in writing and the CM will then recommend adjustments to the Work through value engineering. The Construction Team will discuss and negotiate these recommendations. If an acceptable GMP Proposal is not developed, negotiations may be terminated and the Contract terminated for convenience by the Owner.

The CM shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the issuance of the Notice to Proceed by the Owner for the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

- **Construction Phase**

The Construction Phase shall commence upon the issuance of the Notice to Proceed by the Owner. The Project shall commence no earlier than \_\_\_ (TBD at time of GMP). The services include:

1. Subcontractors. The CM shall develop procedures which are acceptable to the Owner for the prequalification of subcontracts. The CM shall develop Subcontractor interest in the Project and publicly advertise and conduct pre-bid conferences with interested bidders to review the documents.

The CM shall disclose in writing to the Owner all related entities who plan to bid on the Project which share the same or related ownership, management, and/or administration with the CM or its employees. The CM must receive written consent from the Owner prior to accepting a bid from such entity.

The CM shall analyze and evaluate the results of the various bids and estimated amounts and shall prepare for review with the Owner and Architect a bid tabulation analysis and such other supporting data as necessary to properly compare the various bids and their responsiveness to the designed scope of Work. The CM shall review the bids in detail with the apparent low and best bidders and attempt to achieve additional savings through negotiation whenever practical.

The CM shall prepare and submit written recommendations to the Owner for award of subcontracts. The contract award should be made to that responsible bidder submitting the lowest and best responsive bid. The CM will make all bidders aware that Owner is a governmental entity not subject to Ch. 120, F.S., and that the procedures for resolution of procurement protests contained in that Chapter are inapplicable to this Contract and Project.

The CM shall not contract with a Subcontractor to whom the Owner or Architect has made reasonable and timely objection. The CM has a continuing duty to confirm that the awarded Subcontractor holds the proper license(s) required by the State of Florida. Upon approval of the award by the Owner, the CM will promptly award and execute subcontracts with the Subcontractors. If requested by the Owner or Architect, the CM will provide copies of fully executed subcontracts or other information.

The CM shall manage, schedule, and coordinate the Work with the Subcontractors with the activities and responsibilities of the Owner and Architect in order to complete the Project in accordance with the Owner's objectives of cost, time and quality. The CM shall develop and maintain a program, acceptable to the Owner and Architect, to assure quality control of the construction. The CM shall supervise the Work of all Subcontractors by providing instructions to each when its Work does not conform to the requirements of the Drawings and Specifications and continue to manage each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should disagreement occur between the CM and the Architect over acceptability of the Work and conformance with the requirements of the Contract Documents, the Owner shall be the final judge of performance and acceptability.

The CM shall exclusively maintain the level of staff as agreed upon in the GMP Amendment at the Project Site to coordinate and direct the Work and progress of the Subcontractors. The Owner shall have the right to direct the CM to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner and the CM must do so without consideration of additional compensation for the replacement. The



Parties agree that the Owner will not be held liable for any additional cost of compensation for the replacement.

The CM will require the Subcontractors to produce coordination drawings as may be necessary to properly coordinate the Work, and in coordination with Architect, establish and implement procedures for tracking and expediting the procession of shop drawings and samples.

The CM will schedule and conduct weekly progress meetings with Subcontractors to review such matters as job procedures, construction progress, schedule, shop drawing status, and other information as necessary. The CM will provide prior notice to Owner and Architect of all such meetings and will prepare and promptly distribute minutes to the Owner and Architect.

The CM will review the Project Schedule with the Subcontractors and review or expand the level of detail to incorporate specific Subcontractor input consistent with the overall completion requirements. The CM will regularly monitor and update the Project Schedule as construction progresses and will identify potential variances between the schedule and probable completion dates. The CM will make adjustments to the Project Schedule to meet the scheduled completion date for work not started or incomplete.

The CM will provide regular schedule updates and reporting which is included as part of the weekly report and meetings with the Owner and the Architect.

The CM will determine and be responsible for the adequacy of the Subcontractors' personnel and equipment and the availability of materials and supplies to meet the schedule. In consultation with the Owner and Architect, the CM will take necessary corrective actions when the requirements of a Subcontractor are not being met.

The CM is responsible for initiating, maintaining, and supervising effective safety programs and requiring similar programs of the Subcontractors. The Occupational Safety

and Health Administration of the United States Department of Labor, formed by the Occupational Safety and Health Act of 1970 (OSHA), and its guidelines, shall serve as the basis for the construction of an effective safety program. The CM will promptly notify the Owner and Architect in writing upon receiving notice of filing of any charge of non-compliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the Project Site.

The CM, at its weekly meetings with the Subcontractors, will conduct a review of job safety and accident prevention.

2. On-Site Personnel and Procedures. The CM will establish on-site organization and lines of authority in order to carry out the overall plans and identify an on-site staff member to represent the CM, on a daily basis, with authority to negotiate change orders and contract modifications on behalf of the CM.

The CM will establish and implement procedures for coordination among the Owner, Architect, Subcontractors, and the CM, and incorporate them into a project resource manual and will distribute these manuals to the Construction Team.

The CM will make provisions for Project security acceptable to the Owner to protect the Project Site and materials stored off-site against theft, vandalism, fire, and accidents as required by job and location conditions. Mobile equipment and operable equipment at the Project Site, and hazardous parts of new construction subject to mischief, shall be locked or otherwise made inoperable or protected when unattended.

The CM will record the progress of the Project and submit written weekly progress reports at the weekly meetings to the Owner and Architect including information on the Subcontractors' work, the percentage of completion, cost estimating, computerized updated weekly critical path method scheduling and project accounting reports, including estimated time to completion and estimated cost to complete. The CM will keep a daily log available to the Owner and Architect and will report and record such additional information as may

be requested by the Owner or Architect.

The CM shall be responsible for the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, any asbestos or asbestos-related products that may be required in connection with the Work. It shall remain the responsibility of the CM or Subcontractors to properly dispose of any hazardous materials, as described by federal guidelines, that are brought to the site by the CM or the Subcontractors. Any hazardous material not specifically disclosed on the Contract Documents shall be considered a concealed condition. To the extent that a Change Order, as defined herein below, is required as a result of a failure to disclose hazardous materials, the CM shall be responsible for any additional costs incurred that increase the GMP.

The CM shall be responsible for securing any permits from the Florida Department of Environmental Protection, if applicable. The CM is responsible for any penalties or fines incurred due to improper maintenance of permit documentation or of the Project Site.

3. Owner-Furnished Contractor-Installed (“OFCI”). Whenever OFCI materials or equipment are shipped to the Project Site, the CM will notify the Owner. The CM is responsible for the acceptance, proper storage, and incorporation OFCI into the Work, provided the scope of the OFCI is included within the GMP.

The Owner may elect to purchase materials and equipment included in any Subcontractor’s bid for a portion of the Work directly from the supplier of such materials or equipment in order to achieve sales tax savings as “Direct Purchase Materials.” At the time the CM provides the Owner with the bid tabulation analysis (bids will include the cost of all potential Direct Purchase Materials, freight charges FOB Project Site, and applicable sales taxes) as required by this Contract, the CM shall submit to the Owner a list, prepared by applicable Subcontractors, of materials and equipment appropriate for consideration by the Owner as Direct Purchase Materials.

If the Owner elects to purchase any Direct Purchase Materials, it shall so notify the CM,

and the CM shall promptly then furnish to the Owner a purchase order request reflecting the Direct Purchase Materials, without the tax, with documentation of advertising required herein, prequalification criteria for the bid, and the quotes from the bidders.

The Owner will review the materials and may purchase materials directly from a supplier. Upon delivery of the Direct Purchase Materials to the Project Site, the CM shall ensure that they are as requested, immediately document receipt of the materials and the content of the shipment, and forward all paperwork to the Owner. Upon receipt of the documentation, the Owner will take title to the Direct Purchase Materials and the Owner will process any properly prepared invoice from the supplier.

At no additional cost to the Owner, the CM shall obtain builder's risk insurance on the Direct Purchase Materials, naming the Owner as the insured or an additional insured.

The CM shall be responsible for satisfying all of its other obligations with respect to the Direct Purchase Materials as if the Direct Purchase Materials had been purchased by it.

4. Accounting and Cost Control. The CM shall maintain an effective system of Project cost control which is satisfactory to the Owner. The CM will revise and refine the initially approved Project construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. The CM will identify variances between actual and budgeted or estimated costs and advise Owner and Architect whenever projected costs exceed budgets or estimates. The cost control reports shall be included as part of the weekly project report.

The CM shall maintain a system of accounting consistent with generally accepted accounting principles. The CM shall preserve all accounting records for a period of four years after Project completion. The Owner shall have access to all such accounting records at any time.

The CM will develop an Owner's contingency budget within the schedule of values, as defined herein below. Use of these funds will be at the sole discretion of the Owner and

may, at the direction of the Owner, be incorporated into a deductive change to the GMP. The CM shall develop and implement a system for the preparation, review, and processing of contingency modifications and change orders. The CM will recommend necessary or desirable changes to the Owner and Architect, review requests for changes, and submit recommendations to the Owner and Architect. The CM, when requested by the Owner or Architect, will promptly prepare and submit estimates of probable cost for changes proposed in the Work including similar estimates from Subcontractors. If directed by the Owner or Architect, the CM will promptly secure a formal written change order from Subcontractors.

### **Owner's Responsibilities**

The Owner has designated the Architect as a representative to act on its behalf. The Architect will monitor the progress of the Work, serve as a liaison with the CM and Owner, receive and process communications and paperwork, and represent the Owner in the day-to-day conduct of the Project. The CM will be notified in writing of any changes to the Owner's Representatives. The Owner may retain a threshold inspector, if required by Chapter 553, F.S.

### **Guaranteed Maximum Price ("GMP")**

The CM guarantees that the Contract Sum, as defined herein above, shall not exceed the GMP as set forth in the GMP Amendment, which may be amended from time to time. The GMP will only include those taxes in the Cost of the Work which are legally enacted at the time the GMP is established.

All cost savings associated with the GMP shall be returned to the Owner as part of the net aggregate savings established when final accounting is submitted upon Final Completion of the Work, as defined herein below. "Cost savings" are the net difference obtained by deducting from the adjusted GMP, the CM Fee, the expended portions of the CM's contingency, and the actual expenditures representing the Cost of the Work. Liquidated damages, if any, are different from and are not part of this calculation. Upon completion of the bidding period, the CM's contingency will be adjusted so that it does not exceed 10% of the Construction Cost. Those savings resulting from favorable bids will be available for the Owner's use immediately following the bidding period. Changes to the GMP funded by these savings are not eligible for additional CM overhead and profit.

### **Cost of the Work**

The Owner agrees to pay the CM for the Cost of the Work through completion of the Work in addition to the CM Fee, which is defined further below. "Cost of the Work" includes the costs actually incurred and paid by the CM, less any reimbursement for scrap value and case or trade discounts, as follows:

1. Subject to prior approval by Owner, wages paid for labor and benefits in the direct employ of the CM to either perform the construction of the Work or supervise or provide administrative assistance in the construction of the Work other than those provided under CM Fee. Wages include straight time and overtime pay and the cost of associated employee benefits. Employee benefits include, but are not limited to, unemployment compensation, social security, compensated absences, and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaried, or other remuneration paid to the CM's employees. Calculations shall be made based on article 8.2 of the DMS Agreement.
2. Cost of all materials, supplies, and equipment incorporated in the Work or stored on-site, including cost of transportation and storage thereof. At the Owner's sole discretion, the Owner may make payment for materials, supplies, and/or equipment stored off-site.
3. Payments made by CM to Subcontractors for their Work performed pursuant to those contracts with the CM.
4. Costs of the premiums for all insurance or bonds including Subcontractor bonds which the CM is required to procure by this Contract, or other insurance or bonds subsequently deemed necessary by the CM, and agreed upon by the Owner.
5. Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the CM is liable.
6. Except for the building permit fee and inspection fees owed to the Department of Management Services, any other building and permit fee, inspection and filing fees, sewer and water fees, and deposits lost for causes other than then CM's own negligence.
7. Cost of removal and disposal of all debris including clean-up and trash removal. Costs incurred due to an emergency affecting the safety of persons and/or property.
8. Legal costs reasonably and properly resulting from prosecution of the Work for the Owner that are not the result of the CM's own negligence or malfeasance. Legal costs incurred in

connection with disputes solely between the CM and Subcontractors are the responsibility of the CM.

9. Costs of temporary electric power, lighting, water, and heat required for the performance of the Work, or required to protect the Work from weather damage.
10. Costs of temporary safety-related protection including barricades and safety equipment, dust control, pest control, installation and operation temporary hoists, scaffolds, ladders and runways, and temporary project signs and costs of permit and fees pursuant to this Contract.
11. Cost of security services.
12. Cost of surveys, measurements, and layout work reasonably required for the execution of the Work.
13. Cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in subcontracts.
14. Cost of data processing services required in the performance of the Construction Phase services.
15. All costs for reproduction of documents during construction and project closeout.
16. All costs directly incurred in the performance of the Work and not included in the CM Fee.
17. Cost of deductibles for insurance claims.
18. Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand-tools not owned by the workers which are employed or consumed in the performance of the Work.
19. Rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the CM or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation, and delivery costs thereof.
20. Costs associated with temporary fences, and temporary fire protection, and when authorized, associated costs for setting up and demobilizing tool sheds.
21. Cost of field employees or other on-site personnel, as approved in the GMP Amendment,

or their approved replacements, including the cost of all pension, contributions, hospitalization, vacations, medical insurance, assessments or taxes for such items as unemployment compensation and social security, payroll insurance and taxes attributable to wages and salaries for said field employees, as contained in the FSU Multiplier Breakdown template referred to in the DMS Agreement.

### **CM Fee**

The CM agrees to a 6.00% CM Fee. The CM certifies that all factual unit costs supporting the CM Fee during the Contract Term are accurate, complete, and current.

The CM Fee includes the following:

1. The cost of CM's home or branch office employees/consultants not physically present at the Project Site, including the cost of all pension contributions, hospitalizations, bonuses, vacations, medical insurance, assessments or taxes for such items as unemployment compensation and social security, payroll insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees. The following labor is excluded from the CM Fee and is included in the Cost of the Work, paragraph 1, detailed above: Senior Project Manager, Project Manager, Superintendent, & Office Administrator.
2. General operating expenses of the CM's principal and branch offices other than the field office.
3. Any part of the CM's capital expenses, including interest on the CM's capital employed for the Work.
4. Overhead and profit, or general expenses of any kind, except as may be expressly included herein as Cost of the Work.
5. All travel and per diem costs of CM's employees and consultants. All travel costs will be paid in accordance with section 112.061, F.S.
6. Minor expenses such as telegrams, long distance telephone calls, postage, office supplies, expressage, and similar items in connection with the Work.
7. All costs incurred during the warranty period after construction.

Adjustments to the CM Fee will be made as follows:



1. Adjustment due to Changes in the Work shall be made as described below.
2. For delays in the Work caused by the Owner, the CM shall be entitled to an additional fee to compensate the CM for its increased expenses. The amount of this increased fee shall be calculated at a daily rate derived by dividing the CM Fee, excluding profit, by the Contract Term established herein.

### **Changes in the Work**

The Owner may order changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions (“Changes in the Work”). All Changes in the Work shall be authorized as described herein. Except in cases of emergency endangering life or property, the CM shall allow no Changes in the Work without the prior written approval of the Owner.

Changes in the Work may be accomplished by Change Order, Construction Change Directive, or order for a minor change. A Change Order (“CO”) shall be based upon agreement among the Owner, CM, and Architect. A Construction Change Directive (“CCD”) requires agreement by the Owner and Architect. An order for a minor change in the Work may be issued by the Architect.

A CO is a written instrument prepared by the Architect and signed by the Owner, Architect, and CM, stating their agreement upon a Change in the Work, the amount of adjustment to Contract Sum, or Contract Term.

A CCD is a written order prepared by the Architect and signed by the Architect and Owner directing a Change in the Work and stating a proposed basis for adjustment to Contract Sum or Contract Term. Upon receipt of a CCD, the CM shall promptly proceed with the Change in the Work and advise the Architect of the CM’s agreement or disagreement. A CCD signed by the CM indicates the agreement of the CM, is effective immediately, and shall be recorded as a Change Order. If the CM does not promptly disagree in writing for the method of adjustment, the method of adjustment and the Change Order amount shall be determined by the Architect. The CM shall keep and present an itemized accounting of the supporting data. Costs allowed for this purpose is cost of labor and benefits, cost of materials and equipment, including sales tax and cost of transportation, rental cost of machinery and equipment, cost of premiums for bonds, insurance, permit fees and additional costs of supervision and field office personnel directly attributable to the Change in the Work.

The Architect will have authority after receiving Owner's approval to order minor Changes in the Work not involving adjustment to Contract Sum or Contract Term. Such changes shall be in writing and the CM shall carry them out promptly.

The cost of any change shall not include:

1. Salaries or other compensation of CM's personnel at the CM's office, including the field office, unless direct additional expense has been incurred exclusively because of the change,
2. Expenses of any office, including the field office,
3. Any part of CM's capital expenses,
4. Costs due to the negligence of CM or Subcontractor, or
5. Overhead and/or general expense.

The CM Fee to be added to the cost of the Change in the Work shall be in accordance with the CM fee schedule referenced above in the CM Fee Section.

If the Change in the Work results in a credit, the credit shall be net cost of Change in the Work and shall not include any allowance for overhead and profit.

### **Payments to Construction Manager**

In consideration of the performance of services in this Contract, the Owner agrees to pay the CM as compensation for its services as set forth below:

1. For preconstruction services, the cost for bidding and GMP preparation will be included in final GMP.
2. Upon the execution of the GMP Amendment and within 30 days after the issuance of a Notice to Proceed, the CM's applications for payment shall be made monthly.
3. Before the first application for payment in the Construction Phase, the CM shall submit to the Architect and Owner a schedule of values allocated to various portions of the Work supported by data. The schedule of values will serve as a basis for reviewing the CM's applications for payment.
4. The applications for payment for operations completed shall be submitted in accordance with the schedule of values. Applications shall be notarized and supported by such data

substantiating the CM's right to payment, such as copies of requisitions from Subcontractors and materials suppliers and reflect retainage.

5. Retainage shall be withheld from each monthly application for payment in an amount not to exceed 10% of the approved payment until 50% of construction payments are made. After the Work is considered to be 50% complete, retainage thereafter not to exceed 10% of the application for payment, may or may not be withheld at the discretion of the Owner.
6. Payments shall be made for materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work. If approved in writing in advance by Owner, payment may similarly be made for materials and equipment suitably stored off the Project Site at another location. Payment for those materials and equipment shall be conditioned upon compliance by the CM with procedures satisfactory to the Owner to establish the Owner's title to such materials and shall include applicable insurance, storage, and transportation to the Project Site.
7. The CM warrants that title to the Work covered by an application for payment will pass to the Owner no later than the time of payment. The CM warrants that upon submittal of an application for payment, all Work for which Certificates for Payment have been previously issued and for which payments have been received from the Owner, is free and clear of liens, claims, security interests, or encumbrances in favor of the CM, Subcontractors, material suppliers, or other labor men.
8. The Architect will, within seven days after receipt of the CM's application for payment, either issue to the Owner a Certificate for Payment, with a copy to the CM, for such amount as the Architect determines is properly due, or notify the CM and Owner in writing for the Architect's reasons for withholding certification in whole or in part. The issuance of the Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the Project Site and the data comprising the application for payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, the quality of the Work is in accordance with the Contract. The issuance of a Certificate for Payment will further constitute a representation that the CM is entitled to payment in the amount certified.

If the Architect cannot certify payment for any portion, the Architect will issue a Certificate for the amount in which he is able to make such representations to the Owner.

9. As required in section 287.0585, F.S., within seven working days from receipt of payment from the Owner, the CM shall pay each Subcontractor out of the amount paid to the CM the amount to which the Subcontractor is entitled reflecting the percentage actually retained, if any, from payments to the CM. The CM shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-consultants/contractors in a similar manner.
10. As provided by section 215.422, F.S., if a warrant of payment of any invoice is not mailed by the Owner within 40 days after receipt of the Certificate of Payment, and inspection and approval of the services, the Owner shall pay to the CM interest at the rate established in the Florida Statutes on the unpaid balance from the expiration of such 40-day period until such time as the warrant is mailed to the CM. This applies only to undisputed amounts for which payment has been authorized. Invoices or pay requests returned to the CM due to preparation errors will result in a payment delay. Payment requirements do not start until a properly completed application for payment is provided to the Owner and approved by the Architect.
11. All quantity discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall be credited to the Owner.

### **Substantial Completion**

Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete so the Owner can occupy or utilize the Work for its intended use and shall occur no later than the date to be determined in the GMP Amendment.

When the CM considers the Work to be substantially complete, the CM shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The CM shall proceed promptly to complete and correct items on the list. Failure to include an item on the list does not alter the responsibility of the CM to complete all Work. Upon receipt of the list, the Architect will make an inspection to determine whether the Work is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not in accordance with the requirements of the Contract, the CM shall, before its issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect and request another

inspection. When the Work is substantially complete, the Architect will prepare a “Certificate of Substantial Completion” which shall establish the date of Substantial Completion, and shall fix the time within which the CM shall finish all items on the list accompanying the Certificate. Warranties shall commence on the date of Substantial Completion of the Work unless otherwise provided in the Certificate. The Certificate shall be submitted to the Owner and CM for their written acceptance.

Upon certification by the Architect of Substantial Completion, the Owner will make payment, reflecting adjustment in retainage, if any, for such Work. The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the CM except those previously made in writing and identified by the CM as unsettled at the time of the application for payment for Substantial Completion and except for the retainage sums due at final acceptance.

The CM will collect, identify, index, and collate the following materials from the Subcontractors and will deliver four copies to the Architect to verify completeness. The Architect will deliver three copies of the following to the Owner:

- Complete equipment diagrams, operating instructions, maintenance manuals, parts, lists, wiring diagrams, pneumatic or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties for each piece of fixed equipment furnished under the Contract in a ring binder, hardcover book, properly indexed. In addition, it shall include specific information regarding manufacturers’ names and addresses, nearest distributor and service representative’s names, addresses, contact numbers, make and model numbers, operating design and characteristics.

Subsequent to the time of Substantial Completion but prior to the date of Final Acceptance, the CM shall provide a competent and experienced person thoroughly familiar with the Work to instruct the Owner’s personnel in operation and maintenance of equipment and control systems. If, within one year after the date of Substantial Completion or by terms of an applicable special warranty required in the Contract Documents, any Work is found to be not in accordance with the requirements herein, the CM shall correct it promptly after receipt of written notice from the Owner or Architect. This obligation shall survive acceptance of the Work and termination of the Contract.

### **Final Completion and Final Payment**

Upon receipt from the CM of written notice that the Work is ready for final inspection and upon receipt of a final application for payment, the Architect will promptly make such inspection, and if found acceptable, the Architect will promptly issue a final Certificate for Payment. Neither final payment nor any remaining retained percentage shall become due until the CM submits an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied. The CM shall issue a certificate evidencing that: insurance required in the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice to the Owner; a written statement from surety, if any, to final payment; and if required by Owner, other data establishing payment or satisfaction or obligations.

Acceptance of final payment by the CM or a Subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

The CM's application for final payment shall be accompanied by a completed and notarized Certificate of Contract Completion.

### **Claims and Disputes**

A Claim is a written demand or assertion by one of the parties seeking adjustment or interpretation of the Contract terms as well as disputes and matters in question arising out of or relating to the Contract. Claims, including those alleging an error or omission by the Architect shall be referred initially to the Architect. Claims must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim. During the pendency of the Claim, the CM will continue with Contract performance and Owner will continue payments in accordance with the Contract. The Claims can consist of concealed or unknown conditions, additional cost, or additional time.

The Architect will review Claims within ten days of its receipt and either:

- i.) require additional supporting information from the claimant,
- ii.) reject the Claim in whole or in part, stating the reasons therefore,
- iii.) recommend approval of the Claim by the other party, or
- iv.) recommend a compromise.

If the Claim has not been resolved, the claimant must within ten days of the Architect's

recommendation either:

- i.) submit additional documentation,
- ii.) modify the initial Claim, or
- iii.) notify the Architect that the initial Claim stands.

Within seven days' of the receipt of any additional or modification of the claim, the Architect will notify the parties of its decision. The Architect's decision is final and binding on the parties.

### **Insurance**

Prior to the commencement of the Work, the CM shall purchase from and maintain from a properly licensed and duly authorized business in Florida, the following insurance written on ISO standard forms or their equivalents, in order to protect the CM from claims which may arise out of or result from the CM's operations under the Contract. All liability policies shall provide that Owner is a named additional insured as to the operations of the CM under the Contract and shall provide a Severability of Insureds provision. Further, there shall be a waiver of subrogation provision in favor of the Owner to protect the Owner's interests. The Parties agree that the Owner is in no way liable for any sums of money which represent a deductible in the policy, and payment of the deductible is the sole responsibility of the CM. The insurance shall protect the CM from the following claims:

- Claims under workers' compensation as required by Florida law, disability benefit, and other similar employee benefits acts;
- Claims for damages because of bodily injury, occupation, sickness, disease, or death of the CM's employees;
- Claims for damages because of bodily injury, sickness, disease, or death of any person other than the CM's employees;
- Claims for damages insured by usual personal injury liability coverage including claims which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the CM, or by another person;
- Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- Claims for damages because of bodily injury, death of a person, or property damage arising out of ownership, maintenance, or use of a motor vehicle; and
- Claims involving contractual liability insurance applicable to CM's obligations.

The insurance shall be written for no less than \$250,000 per person, \$500,000 per occurrence, or a minimum of \$500,000 combined single limit.

The CM shall maintain automobile liability insurance on all vehicles against bodily injury and property damage in at least the amount of \$100,000 per person, \$300,000 per occurrence, or combined single limit of \$300,000 for bodily injury and property damage.

The CM shall provide one copy of each "Certificate of Insurance" which shall set forth all insurance coverage required herein and shall be dated, contain the name of the insured, the specific job by name and number, the name of the insurer, the number of the policy, its effective date, and termination date.

The CM shall maintain with a company lawfully authorized to do business in Florida, property insurance, written on a builder's risk completed value form. It shall include interests of the Owner, CM, and Subcontractors in the Work. It shall be on a Special Causes of Loss Form or its equivalent including reasonable compensation for Architect's services and expenses required as a result of such insured loss.

#### **Performance and Payment Bond**

Concurrently with execution of the GMP Amendment between the CM and Owner, the CM shall provide a Performance Bond and Payment Bond from a reputable surety duly authorized and licensed to do business in Florida in accordance with section 255.05, F.S., in the amount of the Contract Sum.

#### **Period of Service and Termination**

This Contract may be terminated by either Party with seven days' notice upon mutual agreement, or upon one Party substantially failing to perform in accordance with the Contract through no fault of the other. In the event of termination due to the fault of others than the CM, the CM shall be paid for services performed to termination date, including reimbursements then due, plus termination expense.

This Contract may be terminated by the Owner in its sole discretion upon seven days' notice to the CM.



### **Suspension by the Owner for Convenience**

The Owner may, without cause, order the CM in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

An adjustment shall be made for increases in the cost of performance of the Contract including profit on the increased cost of performance, caused by suspension, delay or interruption.

### **Public Records and Confidentiality of Building Plans**

Work done under this Contract is subject to public records requirements under Article I, Section 24, of the Constitution of the State of Florida and applicable statutes. Unless specifically exempted by law, all records made or received by the CM in conjunction with this Contract may be public records available for inspection by the public.

In order to ensure that records subject to an exemption are not disclosed, the CM agrees to notify the Owner immediately upon receiving a request to disclose any documents or records in the CM's possession that are related to this Contract. The CM also agrees to not allow any inspection of or otherwise disclose any information found in said documents or records unless and until so directed by the Owner.

Pursuant to section 119.071(3)(b), F.S., all building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building are exempt from inspection or disclosure. The CM agrees to protect and ensure the confidentiality of such documents under its custody or control in conformance with the statutory requirements and applicable law. Any knowing violation of Florida law constitutes sufficient grounds for immediate termination of the Contract by the Owner.

### **Advertising**

The Senate shall review and approve any photographic or artistic representation of the Project prior to the use by the CM in its promotions or other professional materials.

### **Contract Contingent upon Approval of Funds**

The Parties both acknowledge and agree that the performance of the Owner and its obligation to pay the CM under this Contract is contingent upon the Senate President's approval of Senate

funds for this purpose.

**Adherence to Senate Policies**

The CM will adhere to Senate Policy 1.60 (Workplace Harassment Prohibited) which is attached as Exhibit A. If the Senate amends Policy 1.60 during the term of the Contract, the Architect and CM will be sent a copy of the amended policy which they shall adhere to. The Parties agree that this is a material condition to the execution of the Contract, and any violation of the Policy can be grounds for termination by the Owner. The Owner has sole discretion to determine whether a violation has occurred and whether termination is warranted. In the event of a termination under this clause, the Architect and CM shall immediately cease Work upon receiving notice of termination. They will be paid pursuant to the contract for all Work provided up to that point and will provide all Work to the Owner.

**Written Notice**

All notices, including Claims, shall be in writing and signed by the party giving same and shall be deemed properly given only if: (1) hand-delivered, sent by reputable overnight courier; (2) registered or certified U.S. mail with return receipt requests, postage prepaid; or (3) by email, with evidence of transmittal and addressed as follows:

Owner\*:  
Reynold Meyer  
Suite 409, The Capitol  
404 South Monroe Street, Tallahassee, FL 32399  
[Meyer.Reynold@flsenate.gov](mailto:Meyer.Reynold@flsenate.gov)

\*If legal notice, additional copy provided to:  
Carlos Rey, General Counsel  
Suite 302, The Capitol, 404 South Monroe Street, Tallahassee, FL 32399  
[Rey.Carlos@flsenate.gov](mailto:Rey.Carlos@flsenate.gov)

Architect: John Nation Hicks  
Nation Architects, Inc. 1382  
Timberlane Rd., Suite C  
Tallahassee, FL 32312  
[jnation@hicksnation.com](mailto:jnation@hicksnation.com)


Construction Manager:

Scott Brewer  
Allstate Construction, Inc.  
5718 Tower Road  
Tallahassee, FL 32303  
[sbrewer@allstateconstruction.com](mailto:sbrewer@allstateconstruction.com)

[SIGNATURE PAGE FOLLOWS]

Executed by the parties below:

Allstate Construction, Inc.

 \_\_\_\_\_ Aug. 17, 2023


Signature

Date

PRESIDENT \_\_\_\_\_

Title

The Florida Senate

 \_\_\_\_\_ 8/24/2023

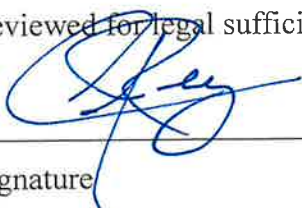
Signature

Date

DEPUTY CHIEF OF STAFF \_\_\_\_\_

Title

Reviewed for legal sufficiency on behalf of the Florida Senate:

 \_\_\_\_\_ 08/25/2023

Signature

Date

Carlos Rey, General Counsel, The Florida Senate