

REQUEST FOR QUALIFICATIONS
No. 24-TA005178DJ
DESIGN BUILD SERVICES FOR
FORCE MAIN 33A, 36A, AND
BAYSHORE ON THE LAKES
REPLACEMENTS
FEBRUARY 21, 2024

Manatee County BCC
Procurement Division
1112 Manatee Avenue West, 7th Floor, Suite 705
Bradenton, FL 34205
purchasing@mymanatee.org



ADVERTISEMENT

REQUEST FOR QUALIFICATIONS NO. 24-TA005178DJ

DESIGN BUILD SERVICES FOR FORCE MAIN 33A, 36A, AND BAYSHORE ON THE LAKES REPLACEMENTS

Manatee County, a political subdivision of the State of Florida (hereinafter referred to as County) will receive qualification proposal responses (Proposals) from individuals, corporations, partnerships, and other legal entities authorized to do business in the State of Florida (Proposers), to provide Design Build Services as specified in this Request for Qualifications.

DATE, TIME AND PLACE DUE:

The Due Date and Time for submission of Proposals in response to this RFQ is **May 3, 2024, by 11:00 AM ET**. Proposals must be delivered to the following location: Manatee County Administration Building, 1112 Manatee Ave. W., 7th Floor, Suite 705, Bradenton, FL 34205 and time stamped by a Procurement representative by the Due Date and Time. Proposals will be opened immediately following the Due Date and Time at the Manatee County Administration Building, 7th Floor, Suite 705.

SOLICITATION INFORMATION CONFERENCE:

A non-mandatory Information Conference will be held at 10:00 AM, March 15, 2024, at the Manatee County Administration Building, 1112 Manatee Ave West, 7th Floor, Suite 705, Bradenton, FL 34205.

DEADLINE FOR QUESTIONS AND CLARIFICATION REQUESTS:

The deadline to submit all questions, inquiries, or requests concerning interpretation, clarification or additional information pertaining to this Request for Qualifications to the Manatee County Procurement Division is **April 5, 2024**. Questions and inquiries should be submitted via email to the Designated Procurement Contact shown below.

Important: A prohibition of lobbying is in place. Review Section A.13 carefully to avoid violation and possible sanctions.

DESIGNATED PROCUREMENT CONTACT: Dave Janney, Procurement Agent III

(941) 749-3056, Fax (941) 749-3034

Email: Dave.Janney@mymanatee.org

Manatee County Financial Management Department

Procurement Division

AUTHORIZED FOR RELEASE:

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SECTION A, INSTRUCTIONS TO PROPOSERS

In order to receive consideration, Proposers must meet the minimum qualification requirements, submit the required forms and information, and comply with the instructions as follows. Proposals will be accepted from a single business entity, joint venture, partnership or corporation. The County intends to award an agreement(s) for the provision of Design Build services as identified in this RFQ.

A.01 INFORMATION CONFERENCE

A non-mandatory Information Conference will be held at 10:00 AM, March 15, 2024, at the Manatee County Administration Building, 1112 Manatee Ave West, 7th Floor, Suite 705, Bradenton, FL 34205.

A.02 DUE DATE AND TIME

The Due Date and Time for submission of Proposals in response to this Request for Qualifications (RFQ) is **May 3, 2024, by 11:00 AM ET**. Proposals must be delivered to the following location: Manatee County Administration Building, 1112 Manatee Ave. W., 7th Floor, Suite 705, Bradenton, FL 34205 prior to the Due Date and Time.

Proposal(s) received after the Due Date and Time will not be considered. It will be the sole responsibility of the Proposer to deliver its Proposal to the Manatee County Procurement Division for receipt on or before the Due Date and Time. If a Proposal is sent by U.S. Mail, courier or other delivery services, the Proposer will be responsible for its timely delivery to the Procurement Division. Proposals delayed in delivery will not be considered, will not be opened at the public opening, and arrangements will be made for their return at the Proposer's request and expense.

A.03 PUBLIC OPENING OF RESPONSES

Sealed Proposals will be publicly opened at Manatee County Administration Procurement Division, 1112 Manatee Avenue West, 7th Floor, Suite 705, Bradenton, Florida 34205, in the presence of County officials immediately upon expiration of the Due Date and Time. Proposers or their representatives may attend the Proposal opening.

Manatee County will make public at the opening the names of the business entities which submitted a Proposal and city and state in which they reside. No review or analysis of the Proposals will be conducted at the Proposal opening.

A.04 SUBMISSION OF RESPONSES

The contents of the Proposal sealed package must include:

- One (1) bound original clearly identifying Proposer and marked "ORIGINAL".
- Three (3) bound copy(s) clearly identifying Proposer and marked "COPY" with all required information and identical to the original.
- One (1) electronic format copy(s) clearly identifying Proposer.

Electronic format copies should be submitted on separate Universal Serial Bus (USB) portable flash memory drives or compact disc (CD) in MicroSoft Office® or Adobe Acrobat® portable document format (PDF) in one continuous file. Do not password

protect or otherwise encrypt electronic Proposal copies. Electronic copies must contain an identical Proposal to the original.

Upon submission, all Proposals become the property of Manatee County which has the right to use any or all ideas presented in any Proposal submitted in response to this Request for Qualifications whether, or not, the Proposal is accepted.

Submit the Proposal package in a sealed container with the following information clearly marked on the outside of the package: RFQ No. 24-TA005178DJ, Design Build Services for Force Main 33A, 36A, and Bayshore on the Lakes Replacements, Proposer's name, and Proposer's address. Proposals must be received by the Manatee County Procurement Division prior to the Due Date and Time at the following address:

Manatee County
Procurement Division
1112 Manatee Avenue West, 7th Floor, Suite 705
Bradenton, FL 34205

A.05 ORGANIZATION OF RESPONSES

Proposals must be organized and arranged with tabs in the same order as listed in the subsections within Exhibit 2, Proposal Response, identifying the response to each specific item.

Proposals must clearly indicate the legal name, address and telephone number of the Proposer. Proposal Signature Form must be signed by an official or other individual authorized to make representations for the Proposer.

A.06 DISTRIBUTION OF SOLICITATION DOCUMENTS

All documents issued pursuant to this RFQ are distributed electronically and available for download at no charge at www.mymanatee.org > *Business* > *Bids and Proposals*. Documents may be viewed and downloaded for printing using Adobe Reader® or Microsoft software, as applicable.

At its sole discretion, the County may utilize a third-party provider to distribute Proposals. For more information regarding this service visit the Procurement webpage of the County website. Utilization of this third-party service is not a requirement for doing business with Manatee County.

Additionally, the RFQ and all related documents are available for public inspection at the Manatee County Procurement Division, 1112 Manatee Avenue West, 7th Floor, Suite 705, Bradenton, FL 34205. Call (941) 749-3014 to schedule an appointment. Documents are available between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, with the exception of County holidays.

As a courtesy, Manatee County notifies the Manatee County Chamber of Commerce and the Manasota Black Chamber of Commerce of all active solicitations, who then distributes the information to its members.

A.07 ADDENDA

Any interpretations, corrections or changes to this RFQ will be made by addendum. Addenda will be posted on the Procurement Division’s web page of the County website at <http://www.mymanatee.org/> > *Business > Bids and Proposals*. For those solicitations that are advertised on a third-party website, addenda will likewise be posted on the third-party website.

All addenda are a part of the RFQ and each Proposer will be bound by such addenda. It is the responsibility of each Proposer to obtain, read and comprehend all addenda issued. Failure of any Proposer to acknowledge an issued addendum in its Proposal will not relieve the Proposer from any obligation contained therein.

A.08 RESPONSE EXPENSES

All costs incurred by Proposer in responding to this RFQ and to participate in any interviews/presentations/demonstrations, including travel, will be the sole responsibility of the Proposer.

A.09 QUESTION AND CLARIFICATION PERIOD

Each Proposer shall examine all RFQ documents and will judge all matters relating to the adequacy and accuracy of such documents. Any questions or requests concerning interpretation, clarification or additional information pertaining to this RFQ shall be made in writing via email to the Manatee County Procurement Division to the Designated Procurement Contact or to purchasing@mymanatee.org. All questions received and responses given will be provided to potential Proposers via an addendum to this RFQ

Manatee County will not be responsible for oral interpretations given by other sources including County staff, representative, or others. The issuance of a written addendum by the Procurement Division is the only official method whereby interpretation, clarification or additional information will be given.

A.10 FALSE OR MISLEADING STATEMENTS

Proposals which contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the Proposer, may be rejected. If, in the opinion of the County, such information was intended to mislead the County in its evaluation of the Proposal, and the attribute, condition or capability is a requirement of this RFQ. Such Proposer will be disqualified from consideration for this RFQ and may be disqualified from submitting a response on future solicitation opportunities with the County.

A.11 WITHDRAWAL OR REVISION OF RESPONSES

Proposers may withdraw Proposals under the following circumstances:

- a. If Proposer discovers a mistake(s) prior to the Due Date and Time. Proposer may withdraw its Proposal by submitting a written notice to the Procurement Division. The notice must be received in the Procurement Division prior to the Due Date and Time for receiving Proposals. A copy of the request shall be retained, and the

unopened Proposal returned to the Proposer; or

- b. After the Proposals are opened but before a contract is signed, Proposer alleges a material mistake of fact if:
 1. The mistake is clearly evident in the solicitation document; or
 2. Proposer submits evidence which clearly and convincingly demonstrates that a mistake was made in the Proposal. Request to withdraw a Proposal must be in writing and approved by the Purchasing Official.

A.12 JOINT VENTURES

Proposers intending to submit a Proposal as a joint venture with another entity are required to have filed proper documents with the Florida Department of Business and Professional Regulation and all other State or local licensing agencies as required by Florida Statute Section 489.119, prior to the Due Date and Time.

A.13 LOBBYING

After the issuance of any solicitation, no prospective Proposer, or their agents, representatives or persons acting at the request of such Proposer, shall contact, communicate with or discuss any matter relating in any way to the solicitation with any County officers, agents or employees, other than the Purchasing Official or designee, unless otherwise directed by the Purchasing Official or designee. This prohibition includes copying such persons on written communications (including email correspondence) but does not apply to presentations made to evaluation committees or at a County Commission meeting where the Commission is considering approval of a proposed contract/purchase order. This requirement ends upon final execution of the contract/purchase order or at the time the solicitation is cancelled. Violators of this prohibition will be subject to sanctions as provided in the Manatee County Code of Ordinances Section 2-26-31 and 2-26-32. Sanctions may include (a) written warning; (b) termination of contracts; and (c) debarment or suspension.

A.14 EXAMINATION OF RESPONSES

The examination and evaluation of the Proposals submitted in response to this solicitation generally requires a period of not less than ninety (90) calendar days from the Due Date and Time.

A.15 ERRORS OR OMISSIONS

Once a Proposal is opened, the County will not accept any request by Proposer to correct errors or omissions in the Proposal other than as identified in paragraph A.11.

A.16 DETERMINATION OF RESPONSIBLENESS AND RESPONSIVENESS

The County will conduct a due diligence review of all Proposals received to determine if the Proposer is responsible and responsive.

To be responsive a Proposer must submit a Proposal that conforms in all material respects to the requirements of this RFQ and contains all the information, fully

completed attachments and forms, and other documentation required. Proposals that are deemed non-responsive will not be considered or evaluated.

To be responsible, a Proposer must meet the minimum qualification requirements and have the capability to perform the Scope of Services contained in this RFQ. Proposals submitted by Proposers that are deemed non-responsive will not be considered or evaluated.

A.17 RESERVED RIGHTS

The County reserves the right to accept or reject any and all Proposals, to waive irregularities and technicalities, to request additional information and documentation, and to cancel this solicitation at any time prior to execution of the contract. In the event only one Proposal is received, the County reserves the right to negotiate with the Proposer. The County reserves the right to award the contract to a responsive and responsible Proposer which in its sole determination is the best value and in the best interests of the County.

The County reserves the right to conduct an investigation as it deems necessary to determine the ability of any Proposer to perform the work or service requested. Upon request by the County, Proposer shall provide all such information to the County. Additional information may include, but will not be limited to, current financial statements prepared in accordance with generally accepted accounting practices and certified by an independent CPA or official of Proposer; verification of availability of equipment and personnel; and past performance records.

A.18 APPLICABLE LAWS

Proposer must be authorized to transact business in the State of Florida. All applicable laws and regulations of the State of Florida and ordinances and regulations of Manatee County will apply to any resulting contract. This solicitation process will be conducted in accordance with Manatee County Code of Ordinances, Chapter 2-26.

A.19 TAXES

Manatee County is exempt from Federal Excise and State Sales Taxes. (F.E.T. Cert. No. 59-78-0089K; Florida Sales Tax Exempt Cert. No. 85-8012622206C-6). Therefore, the Proposer is prohibited from delineating a separate line item in its Proposal for any sales or service taxes.

The Successful Proposer will be responsible for the payment of taxes of any kind, including but not limited to sales, consumer, use, and other similar taxes payable on account of the work performed and/or materials furnished under the award in accordance with all applicable laws and regulations.

A.20 SCRUTINIZED COMPANIES

Pursuant to Florida Statute Section 287.135, as of July 1, 2012, a company that, at the time of submitting a response for a new contract or renewal of an existing contract, is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Florida

Statute Section 215.473, is ineligible for, and may not submit a response for or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more.

A.21 COLLUSION

Proposer certifies that its Proposal is made without prior understanding, agreement, or connection with any other corporation, firm or person submitting a Proposal for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud.

Any such violation may result in contract cancellation, return of materials or discontinuation of services and the possible removal of Proposer from participation in future County solicitations for a specified period.

The County reserves the right to disqualify a Proposer during any phase of the solicitation process and terminate for cause any resulting contract upon evidence of collusion with intent to defraud on the part of the Proposer.

A.22 CODE OF ETHICS

With respect to this Request for Qualifications, if any Proposer violates, directly or indirectly, the ethics provisions of the Manatee County Procurement Code and/or Florida criminal or civil laws related to public procurement, including but not limited to Florida Statutes Chapter 112, Part II, Code of Ethics for Public Officers and Employees, such Proposer will be disqualified from eligibility to perform the work described in this RFQ, and may also be disqualified from submitting any future bids or proposals to supply goods or services to Manatee County.

A.23 PUBLIC ENTITY CRIMES

In accordance with Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases or real property to a public entity, may not be awarded or perform work as a contractor, Successful Proposer, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

In addition, Manatee County Code of Laws Chapter 2-26 Article V prohibits the award of County contracts to any person or entity who/which has, within the past 5 years, been convicted of, or admitted to in court or sworn to under oath, a public entity crime or of any environmental law that, in the reasonable opinion of the Purchasing Official, establishes reasonable grounds to believe the person or business entity will not conduct business in a reasonable manner.

To ensure compliance with the foregoing, Manatee County Code of Laws requires all persons or entities desiring to contract with Manatee County to execute and file with the Purchasing Official an affidavit, executed under the pain and penalties of perjury, confirming that person, entity, and any person(s) affiliated with the entity, does not have such a record and is therefore eligible to seek and be awarded business with Manatee County. Proposer is to complete Form 3 and submit with your Proposal.

A.24 AMERICANS WITH DISABILITIES

Manatee County does not discriminate upon the basis of any individual's disability status. This non-discrimination policy involves every aspect of County's functions including one's access to participation, employment, or treatment in its programs or activities. Anyone requiring reasonable accommodation for an information conference or Proposal opening should contact the person named on the cover page of this document at least twenty-four (24) hours in advance of either activity.

A.25 EQUAL EMPLOYMENT OPPORTUNITY

In accordance with Title VI of the Civil Rights Act of 1964, Title 15, Part 8 of the Code of Federal Regulations and the Civil Rights Act of 1992, Manatee County hereby notifies all Proposers that it will affirmatively ensure minority business enterprises are afforded full opportunity to participate in response to this Request for Qualifications and will not be discriminated against on the grounds of race, color, national origin, religion, sex, age, handicap, or marital status in consideration of award.

A.26 MINORITY AND/OR DISADVANTAGED BUSINESS ENTERPRISE

The State of Florida Office of Successful Proposer Diversity provides the certification process and maintains the database of certified MBE/DBE firms. Additional information may be obtained at <http://www.osd.dms.state.fl.us/iframe.htm> or by calling (850) 487-0915.

A.27 DISCLOSURE

Upon receipt, all inquiries and responses to inquiries related to this Request for Proposal become "Public Records", and shall be subject to public disclosure consistent with Florida Statute, Chapter 119.

Proposals become subject to disclosure thirty (30) days after the opening or if a notice of intent to award decision is made earlier than this time as provided by Florida Statutes § 119.071(1)(b). No announcement or review of the Proposals shall be conducted at the public opening.

If County rejects all Proposals and concurrently notices its intent to reissue the solicitation, the rejected Proposals are exempt from public disclosure until such time the County provides notice of an intended decision concerning the reissued solicitation or until County withdraws the reissued solicitation. A Proposal is not exempt for longer than twelve (12) months after the initial notice of rejection of all Proposals.

Pursuant to Florida Statute 119.0701, to the extent Successful Proposer is performing services on behalf of County, Successful Proposer must:

- a. Keep and maintain public records required by public agency to perform the service. That information and data it manages as part of the services may be public record in accordance with Chapter 119, Florida Statutes and Manatee County public record policies. Proposer agrees, prior to providing goods/services, it will implement policies and procedures, which are subject to approval by County, to maintain, produce, secure, and retain public records in accordance with applicable laws, regulations, and County policies including but not limited to Section 119.0701, Florida Statutes.
- b. Upon request from the public agency's custodian of public records, provide the public agency 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 Florida Statutes, Chapter 119, or as otherwise provided by law.
- c. 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 contract term and following completion of the contract if the Successful Proposer does not transfer the records to the public agency.
- d. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of contractor or keep and maintain public records required by the public agency to perform the service. If the Successful Proposer transfers all public records to County upon completion of the contract, the Successful Proposer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Successful Proposer keeps and maintains public records upon completion of the contract, the Successful Proposer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County, upon request from County's custodian of public records, in a format that is compatible with the information technology systems of County.

IF THE SUCCESSFUL PROPOSER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO ANY RESULTING CONTRACT, CONTACT COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:

PHONE: (941) 742-5845

EMAIL: LACY.PRITCHARD@MYMANATEE.ORG

ATTN: RECORDS MANAGER

1112 MANATEE AVENUE WEST

BRADENTON, FL 34205

A.28 TRADE SECRETS

Manatee County is subject to Chapter 119, Florida Statutes. Therefore, all documents, materials, and data submitted as part of a Proposal in response to a Request for Proposal are governed by the disclosure, exemption and confidentiality provisions relating to public records in Florida Statutes.

Notwithstanding any other provision in this solicitation, designation of the entire proposal as ‘trade secret’, ‘proprietary’, or ‘confidential’ is not permitted and may result in a determination that the Proposal is non-responsive and therefore the proposal will not be evaluated or considered.

Except for materials that are ‘trade secrets’ as defined by Chapter 812, Florida Statutes, ownership of all documents, materials and data submitted as part of a Proposal in response to the Request for Proposal shall belong exclusively to County.

To the extent that Proposer desires to maintain the confidentiality of materials that constitute trade secrets pursuant to Florida law, trade secret material submitted must be segregated from the portions of the Proposal that are not declared as trade secret. In addition, Proposer shall cite, for each trade secret claimed, the Florida Statute number which supports the designation. Further, Proposer shall offer a brief written explanation as to why the cited Statute is applicable to the information claimed as trade secret. Additionally, Proposer shall provide a hard copy of its Proposal that redacts all information designated as trade secret.

In conjunction with trade secret designation, Proposer acknowledges and agrees that:

- a. Trade secret requests made after the opening will not be considered. However, County reserves the right to clarify the Proposers request for trade secret at any time; and
- b. County and its officials, employees, agents, and representatives are hereby granted full rights to access, view, consider, and discuss the information designated as trade secret throughout the evaluation process and until final execution of any awarded purchase order or contract; and
- c. That after notice from County that a public records request has been made pursuant to Proposer’s proposal, the Proposer at its sole expense, shall be responsible for defending its determination that submitted material is a trade secret and is not subject to disclosure. Action by Proposer in response to notice from the County shall be taken immediately, but no later than 10 calendar days from the date of notification or Proposer will be deemed to have waived the trade secret designation of the materials.

Proposer shall indemnify and hold County, and its officials, employees, agents and representatives harmless from any actions, damages (including attorney’s fees and costs), or claims arising from or related to the designation of trade secrets by the Proposer, including actions or claims arising from County’s non-disclosure of the trade secret materials.

A.29 CONFIDENTIALITY OF SECURITY RELATED RECORDS

- a. Pursuant to Florida Statutes § 119.071(3), the following records (hereinafter referred to collectively as “the Confidential Security Records”) are confidential and exempt from the disclosure requirements of Florida Statutes § 119.07(1):
 - 1. A Security System Plan or portion thereof for any property owned by or leased to County or any privately owned or leased property held by County.
 - 2. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by County.
 - 3. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development in the possession of, submitted to County.
- b. Successful Proposer agrees that, as provided by Florida Statute, it shall not, as a result of a public records request, or for other reason disclose the contents of, or release or provide copies of the Confidential Security Records to any other party absent the express written authorization of County’s Property Management Director or to comply with a court order requiring such release or disclosure. To the extent Successful Proposer receives a request for such records, it shall immediately contact the County’s designated Contract administrator who shall coordinate County’s response to the request.

A.30 E-VERIFY

Prior to the employment of any person under this contract, the Successful Proposer shall utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of (a) all persons employed during the contract term by the Successful Proposer to perform employment duties within Florida and (b) all persons, including subcontractors, assigned by the Successful Proposer to perform work pursuant to the contract with Manatee County. For more information on this process, please refer to United States Citizenship and Immigration Service site at: <http://www.uscis.gov/>.

Only those individuals determined eligible to work in the United States shall be employed under this contract.

By submission of a Proposal in response to this RFQ, the successful Proposer commits that all employees and subcontractors will undergo e-verification before placement on this contract.

The successful Proposer shall maintain sole responsibility for the actions of its employees and subcontractors. For the life of the contract, all employees and new

employees brought in after contract award shall be verified under the same requirement stated above.

A.31 LICENSES AND PERMITS

The successful Proposer shall be solely responsible for obtaining all necessary license and permit fees, including, but not limited to, all license fees, permit fees, impact fees, or inspection fees, and responsible for the costs of such fees. Successful Proposer is solely responsible for ensuring all work complies with all Federal, State, local, and Manatee County ordinances, orders, codes, laws, rules, regulations, directives, and guidelines.

A.32 MINIMUM WAGE REQUIREMENTS

The successful Proposer shall comply with all minimum wage requirements, such as Living Wage requirements, minimum wages based on Federal Law, minimum wages based on the Davis-Bacon Act, and the provisions of any other employment laws, as may be applicable to the Agreement.

A.33 PROTEST

Any actual bidder, Proposer, or contractor who is aggrieved in connection with the notice of intent to award of a contract with a value greater than \$250,000 where such grievance is asserted to be the result of a violation of the requirements of the Manatee County Procurement Code or any applicable provision of law by the officers, agents, or employees of the County, may file a protest to the Purchasing Official.

Protest must be in writing and delivered via email at purchasing@mymanatee.org or by hand delivery to the Procurement Division at 1112 Manatee Avenue West, 7th Floor, Suite 705, Bradenton, FL 34205 by 5:00 p.m. on the fifth business day following the date of posting of the Notice of Intent to Award on the County website. There is no stay of the procurement process during a protest. The Purchasing Official shall have the authority to settle and resolve a protest concerning the intended award of a contract.

For additional information regarding the County protest process, visit the Procurement Division webpage on the County website.

A.34 BINDING OFFER

Proposals will remain valid for a period of 120 days following the Due Date and Time and will be considered a binding offer to perform the required services and/or provide the required goods. The submission of a Proposal will be taken as prima facie evidence that the Proposer has familiarized itself with the contents of this Solicitation

A.35 ACCESSIBILITY

The County is committed to making its documents and information technologies accessible to individuals with disabilities by meeting the requirements of Section 508 of the Rehabilitation Act and best practices (W3C WCAG 2). **For assistance with accessibility regarding this solicitation, contact the Manatee County Procurement Division via email at purchasing@mymanatee.org or by phone at 941-748-4501, X3014.**

Successful Proposer shall ensure all its electronic information, documents, applications, reports, and deliverables required in the proposal are in a format that meets the requirements of Section 508 of the Rehabilitation Act and best practices (W3C WCAG 2).

Where not fully compliant with these requirements and best practices, Successful Proposer shall provide clear points of contact for each document and information technology to direct users in how to obtain alternate formats. Further, Successful Proposer shall develop accommodation strategies for those non-compliant resources and implement strategies to resolve the discrepancies.

A.36 SOLICITATION SCHEDULE

The following schedule has been established for this Solicitation process. Refer to the County’s website (www.mymanatee.org > *Business > Bids & Proposals*) for meeting locations and updated information pertaining to any revisions to this schedule.

Scheduled Item	Scheduled Date
Non-Mandatory Solicitation Information Conference at Manatee County Admn. Building, 7th Floor, Suite 705, 1112 Manatee Ave West, Bradenton, FL 34205	March 15, 2024 @ 10:00 AM
Question and Clarification Deadline	April 5, 2024
Proposal due Date and Time	May 3, 2024, by 11:00 AM
Technical Evaluation Meeting	TBD
Technical Evaluation Meeting	TBD
Interviews/Presentations/Demonstrations (if conducted)	TBD
Final Evaluation Meeting (if required)	TBD
Projected Award	August 2024

END SECTION A

SECTION B, EVALUATION OF RESPONSES

B.01 EVALUATION

A due diligence review will be conducted to determine if the Proposal is responsive to the submission requirements outlined in this Solicitation and to determine if the Proposer is a responsible Proposer.

A responsive Proposal is one that follows the requirements of this Solicitation, includes all documentation, is submitted in the format outlined in this Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the Proposal being deemed non-responsive. A responsible Proposer is a Proposer which the County affirmatively determines has the ability, capability and skill to perform under the terms of the agreement; can provide the materials and/or service promptly within the time specified, without delay or interference; has a satisfactory record of integrity and business ethics; and meets the minimum qualification requirements in this RFQ.

Evaluation of Proposals will be conducted by an evaluation committee. Each evaluation committee member will evaluate and score the Proposals for each of the evaluation criteria. The committee will consider all information submitted by each responsible and responsive Proposer; clarification information provided by Proposer; information obtained during the interviews, presentations, or demonstrations; feedback received from Proposer's references; and any other relevant information received during any investigation of Proposer to ascertain the ability of the Proposer to perform the Scope of Services as stated in this RFQ.

B.02 EVALUATION CRITERIA

The following evaluation criteria have been established for this RFQ.

<u>Evaluation Criteria</u>	<u>Maximum Points</u>
Proposer & Team's Experience	30
Approach to Design and Construction	20
Organizational Structure and Capacity	30
Similar Completed Projects	20

B.03 CLARIFICATIONS, INTERVIEWS, PRESENTATIONS, DEMONSTRATIONS

As part of the evaluation process, the evaluation committee will determine a list of those responsive and responsible Proposals that are deemed by the committee as having a reasonable probability of being selected for award (Short List). At a minimum, the evaluation committee shall conduct discussions with the Short List Proposers and may request additional information or clarification from Proposers for the purpose of further evaluation of (a) conformance to the solicitation requirements, (b) the abilities of the Proposer, and (c) understanding of the Proposal submitted. Additional information and clarification must be submitted by Proposer within the requested time-period.

Additionally, interviews, presentations or demonstrations may be conducted with Proposers as part of the evaluation process. If conducted, the Short List Proposers will be invited to meet with the committee. The information gained from these interviews, presentations, or demonstrations will be part of the committee's consideration in making a recommendation for award. Therefore, Proposers should make arrangements to attend, if invited.

The interviews, presentations and demonstrations are closed to the public to the extent permitted by law.

In the final evaluations, each evaluator will consider the information obtained from the proposals as well as the discussions and clarifications presented during the presentations. As part of the final evaluations, the initial technical evaluation scores for each short-listed firm, in each of the evaluation criterion, will be discussed by the evaluation committee and are subject to change.

B.04 RECOMMENDATION FOR NEGOTIATION

The evaluation committee will determine from the responses to this RFQ and subsequent investigations, the Proposer(s) who best meets the County's requirements. Upon completion of the technical evaluations, the evaluation committee will make a recommendation as to the Proposer(s) which the County should enter into negotiations, if any. The County will notice the Intent to Negotiate, in the same manner the original Request for Qualifications document was noticed prior to commencing negotiations.

Upon approval to commence negotiations, the recommended Proposer(s) shall submit one original hard copy and one electronic copy on a CD or USB flash drive of its pricing proposal. The pricing information should show a categorical breakout of the pricing, with any alternates or options clearly identified. The pricing information shall be clear and unambiguous to facilitate evaluation of the prices submitted.

The County will conduct negotiations with the highest scoring Proposer. If the County and the highest-scored Proposer cannot reach agreement on a contract, the County reserves the right to terminate negotiations and may, at its sole discretion, begin negotiations with the next highest-scored Proposer(s). This process may continue until a contract acceptable to the County has been negotiated or all Proposals are rejected.

B.05 RECOMMENDATION FOR AWARD

Upon successful completion of negotiations, a recommendation for award to the successful Proposer(s) will be presented for approval per County ordinances, policies and procedures.

END SECTION B

SECTION C, AWARD OF THE AGREEMENT

C.01 GENERAL

By submitting a Proposal, Proposer understands and agrees:

- a. The Proposal and all subsequent information requested by the County during the procurement process will serve as a basis for the Agreement.
- b. All products and papers produced during the Agreement period become the property of Manatee County upon termination or completion of the engagement.

C.02 AGREEMENT

The successful Proposer(s) will be required to execute the Agreement in a form and with provisions acceptable to the County (See Exhibit 6, Sample Agreement). The County (as Owner) will execute this Agreement with the successful Proposer (as Consultant).

The negotiated Agreement may or may not include all elements of this RFQ or the Proposal submitted by the successful Proposer(s) where alternatives provide best value, are desirable to the County, and the parties agree to such terms. Negotiations of the terms of the Agreement, may include specifications, scope of project, price, the Agreement period, renewal, or any other relevant provisions.

C.03 AWARD

County does not make award to a Proposer who is delinquent in payment of any taxes, fees, fines, contractual debts, judgments, or any other debts due and owed to County, or is in default on any contractual or regulatory obligation to County. By submitting this solicitation response, Proposer attests that it is not delinquent in payment of any such debts due and owed to County, nor is it in default on any contractual or regulatory obligation to County. In the event the Proposer's statement is discovered to be false, Proposer will be subject to suspension and debarment and County may terminate any contract it has with Proposer.

Award of the Agreement is subject to approval as provided for in the Manatee County Procurement Code.

END SECTION C

SECTION D, FORMS

FORM 1 - ACKNOWLEDGMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda:

Addendum No. _____	Date Received:

Print or type Proposer’s information below:

_____	_____
Name of Proposer	Telephone Number
_____	_____
Street Address	City/State/Zip
_____	_____
Email Address	Website Address
_____	_____
Print Name & Title of Authorized Officer	Signature of Authorized Official Date

Return this fully executed form with your Proposal.

FORM 2 - PROPOSAL SIGNATURE FORM

The undersigned represents that by signing this Proposal Signature Form that:

- (1) He/she has the authority and approval of the legal entity purporting to submit the Proposal and any additional documentation which may be required such as the Joint Venture Agreement or Joint Venture Affidavit, if applicable; and
- (2) All facts and responses set forth in the Proposal are true and correct; and
- (3) If the Proposer is selected by County to negotiate an agreement, that Proposer’s negotiators will negotiate in good faith to establish an agreement to provide the services described in this RFQ; and
- (4) By submitting a Proposal and signing below, the Proposer agrees to the terms and conditions in this RFQ, which incorporates all addenda, appendices, exhibits, and attachments, in its entirety, and is prepared to sign the Agreement, of which a sample is incorporated into this RFQ as Exhibit 6. The Proposer understands that if it submits exceptions to the Sample Agreement in its Proposal, the Proposer may be determined non-responsive.

Print or type Proposer’s information below:

_____ Name of Proposer	_____ Telephone Number
_____ Street Address	_____ City/State/Zip
_____ Email Address	_____ Web Address
_____ Print Name & Title of Authorized Officer	_____ Signature of Authorized Officer Date
_____	_____

Return this fully executed form with your Proposal.

**FORM 3 - PUBLIC CONTRACTING AND ENVIRONMENTAL CRIMES
CERTIFICATION**

SWORN STATEMENT PURSUANT TO MANATEE COUNTY PROCUREMENT CODE
SECTION 2-26 ARTICLE V,

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY
PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

This sworn statement is submitted to Manatee County by

[print individual's name and title]

for _____

[name of entity submitting sworn statement]

whose business address is: _____

and (if applicable) its Federal Employer Identification Number (FEIN) is _____

_____. If the entity has no FEIN, include the Social Security Number of the individual signing
this sworn statement:

I, the undersigned, understand that no person or entity shall be awarded or receive a
County contract for public improvements, procurement of goods or services (including
professional services) or a county lease, franchise, concession or management agreement,
or shall receive a grant of County monies unless such person or entity has submitted a
written certification to County that it has not:

(1) been convicted of bribery or attempting to bribe a public officer or employee of
Manatee County, the State of Florida, or any other public entity, including, but not
limited to the Government of the United States, any state, or any local government
authority in the United States, in that officer's or employee's official capacity; or

(2) been convicted of an agreement or collusion among Proposers or prospective
Proposers in restraint of freedom of competition, by agreement to bid a fixed price, or
otherwise; or

(3) been convicted of a violation of an environmental law that, as determined by the
County, reflects negatively upon the ability of the person or entity to conduct business in
a responsible manner; or

(4) made an admission of guilt of such conduct described in items (1), (2) or (3) above,
which is a matter of record, but has not been prosecuted for such conduct, or has made an
admission of guilt of such conduct, which is a matter of record, pursuant to formal
prosecution. An admission of guilt shall be construed to include a plea of nolo
contendere; or

(5) where an officer, official, agent or employee of a business entity has been convicted of, or has admitted guilt to, any of the crimes set forth above on behalf of such and entity and pursuant to the direction or authorization of an official thereof (including the person committing the offense, if he/she is an official of the business entity), the business shall be chargeable with the conduct herein above set forth. A business entity shall be chargeable with the conduct of an affiliated entity, whether wholly owned, partially owned, or one which has common ownership or a common board of directors.

For purposes of this Form, business entities are affiliated if, directly or indirectly, one business entity controls or has the power to control another business entity, or if an individual or group of individuals controls or has the power to control both entities. Indicia of control shall include, without limitation, interlocking management or ownership, identity of interests amount family members, shared organization of a business entity following the ineligibility of a business entity under this Article, or using substantially the same management, ownership or principles as the ineligible entity.

Any person or entity who claims that this Article is inapplicable to him/her/it because a conviction or judgment has been reversed by a court of competent jurisdiction, shall prove the same with documentation satisfactory to Manatee County's Purchasing Official. Upon presentation of such satisfactory proof, the person or entity shall be allowed to contract with Manatee County.

I UNDERSTAND THAT ANY CONTRACT OR BUSINESS TRANSACTION SHALL PROVIDE FOR SUSPENSION OF PAYMENTS, OR TERMINATION, OR BOTH, IF THE PROCUREMENT DIVISION OR THE COUNTY ADMINISTRATOR DETERMINES THAT SUCH PERSON OR ENTITY HAS MADE FALSE CERTIFICATION.

Signature of Contractor Representative

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me this _____ day of _____, 20____
by _____. Personally known OR Produced the
following identification

[Type of identification]

Notary Public Signature

My commission expires_____

[Print, type or stamp Commissioned name of Notary Public]

Signatory Requirement - In the case of a business entity other than a partnership or a corporation, this affidavit shall be executed by an authorized agent of the entity. In the case of a partnership, this affidavit shall be executed by the general partner(s). In the case of a corporation, this affidavit shall be executed by the corporate president.

Return this fully executed form with your Proposal.

FORM 4 - CONFLICT OF INTEREST DISCLOSURE FORM

The award of an agreement resulting from this RFQ is subject to the provisions of Manatee County Code of Laws. Proposer must disclose within its Proposal: the name of any officer, director, or agent who is also an employee of Manatee County. Furthermore, Proposer must disclose the name of any County employee who owns, directly or indirectly, an interest of more than five percent (5%) in the Proposer’s firm or any of its branches, divisions, or affiliates.

By signing below, Proposer confirms that it is not currently engaged or will not become engaged in any obligations, undertakings or contracts that will require the firm to maintain an adversarial role against the County or that will impair or influence the advice or recommendations it provides to the County.

Please check one of the following statements and attach additional documentation if necessary:

_____ To the best of my knowledge, the undersigned firm has no potential conflict of interest for this RFQ.

_____ The undersigned firm, by execution of this form, submits information which may be a potential conflict of interest for this RFQ.

Acknowledged and attested to by:

_____ Firm Name

_____ Signature

_____ Name and Title (Print or Type)

_____ Date

Return this fully executed form with your Proposal.

FORM 5 - NON-COLLUSION AFFIDAVIT

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, personally appeared _____, who, after being by me first duly sworn, deposes and says of his/her personal knowledge that:

- a. He/She is _____ of _____, the Proposer that has submitted a Proposal to perform work for the following:
RFQ No.: _____ Title: _____
- b. He/She is fully informed respecting the preparation and contents of the attached Request for Qualifications, and of all pertinent circumstances respecting such Solicitation.
Such Proposal is genuine and is not a collusive or sham Proposal.
- c. Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Proposer, firm, or person to submit a collusive or sham Proposal in connection with the Solicitation and contract for which the attached Proposal has been submitted or to refrain from proposing in connection with such Solicitation and contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Proposer, firm, or person to fix the price or prices in the attached Proposal or any other Proposer, or to fix any overhead, profit, or cost element of the Proposal price or the Proposal price of any other Proposer, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City or any person interested in the proposed contract.
- d. The price or prices to be submitted shall be fair and proper and shall not be tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature: _____

Subscribed and sworn to (or affirmed) before me this _____ day of _____ 20__, by _____, who is personally known to me OR has produced _____ as identification.

Notary Signature _____

Notary Name: _____

Notary Public (State): _____

My Commission No: _____

Expires on: _____ + _____

SEAL

Return this fully executed form with your Proposal.

FORM 6 - TRUTH – IN – NEGOTIATION CERTIFICATE

The undersigned warrants (i) that it has not employed or retained any company or person, other than bona fide employees working solely for the undersigned, to solicit or secure the Agreement and (ii) that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than its bona fide employees working solely for the undersigned or agreed to pay any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement.

The undersigned certifies that the wage rates and other factual unit costs used to determine the compensation provided for in the Agreement are accurate, complete, and current as of the date of the Agreement.

(This document must be executed by an authorized official of Proposer (e.g., President, CEO, Partner, Managing Partner)

Name: _____

Title: _____

Date: _____

Signature: _____

Return this fully executed form with your Proposal.

FORM 7 – SCRUTINIZED COMPANY CERTIFICATION

This certification is required pursuant to Florida State Statute Section 287.135 and must be executed and returned with Proposer’s Proposal.

As of July 1, 2011, a company that, at the time of bidding or submitting a Proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List is ineligible for, and may not bid on, submit a Proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more.

Companies must complete and return this form with its response.

Company: _____

FEIN: _____

Address. _____

City/State/Zip. _____

I, _____, as a representative of _____
_____ certify and affirm that this entity is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

Signature

Title

Printed Name

Date

Return this fully executed form with your Proposal.

FORM 8, INSURANCE REQUIREMENTS

The Successful Proposer will not commence work under the resulting Agreement until all insurance coverages indicated by an “X” herein have been obtained. The Successful Proposer shall obtain and submit to the Procurement Division within ten (10) calendar days from the date of notice of intent to award, at its expense, the following minimum amounts of insurance (inclusive of any amounts provided by an umbrella or excess policy): Work under this Agreement cannot commence until all insurance coverages indicated herein have been obtained on a standard ACORD form (inclusive of any amounts provided by an umbrella or excess policy):

Automobile Liability Insurance Required Limits

Coverage must be afforded under a per occurrence policy form including coverage for all owned, hired and non-owned vehicles for bodily injury and property damage of not less than:

- \$2,000,000 Combined Single Limit; OR
- \$1,000,000 Bodily Injury and \$1,000,000 Property Damage
- \$10,000 Personal Injury Protection (No Fault)
- \$ Hired, Non-Owned Liability
- \$10,000 Medical Payments

This policy shall contain severability of interests' provisions.

Commercial General Liability Insurance Required Limits (per Occurrence form only; claims-made form is not acceptable)

Coverage shall be afforded under a per occurrence policy form, policy shall be endorsed and name ‘Manatee County, a political subdivision of the State of Florida’ as an Additional Insured, and include limits not less than:

- \$3,000,000 Single Limit Per Occurrence
- \$6,000,000 Aggregate
- \$6,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal and Advertising Injury Liability
- \$100,000 Fire Damage Liability
- \$10,000 Medical Expense, and
- \$1,000,000, Third Party Property Damage
- \$6,000,000.00 Project Specific Aggregate (Required on projects valued at over \$10,000,000)

This policy shall contain severability of interests' provisions.

Employer’s Liability Insurance

Coverage limits of not less than:

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

- Worker's Compensation Insurance
- US Longshoremen & Harbor Workers Act**
- Jones Act Coverage**

Coverage limits of not less than:

- Statutory workers' compensation coverage shall apply for all employees in compliance with the laws and statutes of the State of Florida and the federal government.
- If any operations are to be undertaken on or about navigable waters, coverage must be included for the US Longshoremen & Harbor Workers Act and Jones Act.

Should 'leased employees' be retained for any part of the project or service, the employee leasing agency shall provide evidence of Workers' Compensation coverage and Employer's Liability coverage for all personnel on the worksite and in compliance with the above Workers' Compensation requirements. NOTE: Workers' Compensation coverage is a firm requirement. Elective exemptions are considered on a case-by-case basis and are approved in a very limited number of instances.

Aircraft Liability Insurance Required Limits

Coverage shall be afforded under a per occurrence policy form, policy shall be endorsed and name 'Manatee County a political subdivision of the State of Florida' as an Additional Insured, and include limits not less than:

- \$ Each Occurrence Property and Bodily Injury with no less than \$100,000 per passenger each occurrence or a 'smooth' limit.
- \$ General Aggregate.

Un-Manned Aircraft Liability Insurance (Drone)

Coverage shall be afforded under a per occurrence policy form, policy shall be endorsed and name 'Manatee County a political subdivision of the State of Florida' as an Additional Insured, and include limits not less than:

- \$ Each Occurrence Property and Bodily Injury; Coverage shall specifically include operation of Unmanned Aircraft Systems (UAS), including liability and property damage.
- \$ General Aggregate

Installation Floater Insurance

When the contract or agreement **does not** include construction of, or additions to, above ground building or structures, but does involve the installation of machinery or equipment, Installation Floater Insurance shall be afforded under a per occurrence policy form, policy shall be endorsed and name "Manatee County, a political subdivision of the State of Florida" as an Additional Insured, and include limits not less than:

- 100% of the completed value of such addition(s), building(s), or structure(s)

Professional Liability and/or Errors and Omissions (E&O) Liability Insurances

Coverage shall be afforded under either an occurrence policy form or a claims-made policy form. If the coverage form is on a claims-made basis, then coverage must be maintained for a minimum of three years from termination of date of the contract. Limits must not be less than:

- \$ 5,000,000 Bodily Injury and Property Damage Each Occurrence
- \$ 5,000,000 General Aggregate

Builder's Risk Insurance

When the contract or agreement includes the construction of roadways and/or the addition of a permanent structure or building, including the installation of machinery and/or equipment, Builder's Risk Insurance shall be afforded under a per occurrence policy form, policy shall be endorsed and name "Manatee County, a political subdivision of the State of Florida" as an Additional Insured, and include limits not less than:

- An amount equal to 100% of the completed value of the project, or the value of the equipment to be installed
- The policy shall not carry a self-insured retention/deductible greater than \$10,000

Coverage shall be for all risks and include, but not be limited to, storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project, theft coverage, and Waiver of Occupancy Clause Endorsement, where applicable.

Cyber Liability Insurance

Coverage shall comply with Florida Statute 501.171, shall be afforded under a per occurrence policy form, policy shall be endorsed and name 'Manatee County, a political subdivision of the State of Florida' as an Additional Insured, and include limits not less than:

- \$ Security Breach Liability
- \$ Security Breach Expense Each Occurrence
- \$ Security Breach Expense Aggregate
- \$ Replacement or Restoration of Electronic Data
- \$ Extortion Threats
- \$ Business Income and Extra Expense
- \$ Public Relations Expense

NOTE: Policy must not carry a self-insured retention/deductible greater than \$25,000.

Hazardous Materials Insurance (As Noted Below)

Hazardous materials include all materials and substances that are currently designated or defined as hazardous by the law or rules of regulation by the State of Florida or federal government. All coverage shall be afforded under either an occurrence policy form or a claims-made policy form, and the policy shall be endorsed and name 'Manatee County, a political subdivision of the State of Florida' as an Additional Insured. If the coverage form is on a claims-made basis, then coverage must be maintained for a minimum of three years from termination of date of the contract. Limits must not be less than:

- Pollution Liability**

Amount equal to the value of the contract, subject to a \$1,000,000 minimum, for Bodily Injury and Property Damage to include sudden and gradual release, each claim and aggregate.

Asbestos Liability (If handling within scope of Contract)

Amount equal to the value of the contract, subject to a \$1,000,000 minimum, for Bodily Injury and Property Damage to include sudden and gradual release, each claim and aggregate.

Disposal

When applicable, Successful Proposer shall designate the disposal site and furnish a Certificate of Insurance from the disposal facility for Environmental Impairment Liability Insurance covering liability.

- Amount equal to the value of the contract, subject to a \$1,000,000 minimum, for Liability for Sudden and Accidental Occurrences, each claim and an aggregate.
- Amount equal to the value of the contract, subject to a \$1,000,000 minimum, for Liability for Non-Sudden and Accidental Occurrences, each claim and an aggregate.

Hazardous Waste Transportation Insurance

Successful Proposer shall designate the hauler and have the hauler furnish a Certificate of Insurance for Automobile Liability insurance with Endorsement MCS-90 for liability arising out of the transportation of hazardous materials. EPA identification number shall be provided.

All coverage shall be afforded under either an occurrence policy form or a claims-made policy form and the policy shall be endorsed and name “Manatee County, a political subdivision of the State of Florida” as an Additional Insured. If the coverage form is on a claims-made basis, then coverage must be maintained for a minimum of three years from termination of date of the contract. Limits must not be less than:

- Amount equal to the value of the contract, subject to a \$1,000,000 minimum, per accident.

Liquor Liability Insurance

Coverage shall be afforded under a per occurrence policy form, policy shall be endorsed and name “Manatee County, a political subdivision of the State of Florida” as an Additional Insured, and include limits not less than:

- \$1,000,000 Each Occurrence and Aggregate

Garage Keeper’s Liability Insurance

Coverage shall be required if the maintenance, servicing, cleaning or repairing of any County motor vehicles is inherent or implied within the provision of the contract.

Coverage shall be afforded under a per occurrence policy form, policy shall be endorsed and name “Manatee County, a political subdivision of the State of Florida” as an Additional Insured, and include limits not less than:

- Property and asset coverage in the full replacement value of the lot or garage.

Bailee’s Customer Liability Insurance

Coverage shall be required for damage and/or destruction when County property is temporarily under the care or custody of a person or organization, including property that is on, or in transit to and from the person or organization’s premises. Perils covered should include fire, lightning, theft, burglary, robbery, explosion, collision, flood, earthquake and damage or destruction during transportation by a carrier.

Coverage shall be afforded under a per occurrence policy form, policy shall be endorsed and name “Manatee County, a political subdivision of the State of Florida” as an Additional Insured, and include limits not less than:

- Property and asset coverage in the full replacement value of the County asset(s) in the Successful Proposer’S care, custody and control.

Hull and Watercraft Liability Insurance

Coverage shall be afforded under a per occurrence policy form, policy shall be endorsed and name “Manatee County, a political subdivision of the State of Florida” as an Additional Insured, and include limits not less than:

- \$ Each Occurrence
- \$ General Aggregate
- \$ Fire Damage Liability
- \$10,000 Medical Expense, and
- \$ Third Party Property Damage
- \$ Project Specific Aggregate (Required on projects valued at over \$10,000,000)

Other [Specify]

BOND REQUIREMENTS

Bid Bond

A Bid Bond in the amount of 5% of the total offer. Bid bond shall be submitted with the sealed response and shall include project name, location, and / or address and project number. In lieu of the bond, the bidder may file an alternative form of security in the amount of 5% of the total offer. in the form of a money order, a certified check, a cashier’s check, or an irrevocable letter of credit issued to Manatee County. NOTE: A construction project over \$200,000 requires a Bid Bond in the amount of 5% of the total bid offer.

Payment and Performance Bond

A Payment and Performance Bond shall be submitted by Successful Bidder for 100% of the award amount and shall be presented to Manatee County within ten (10) calendar days of

issuance of the notice of intent to award. NOTE: A construction project over \$200,000 requires a Payment and Performance Bond.

INSURANCE REQUIREMENTS

I. THE POLICIES ARE TO CONTAIN, OR BE ENDORSED TO CONTAIN, THE FOLLOWING PROVISIONS:

Commercial General Liability and Automobile Liability Coverages

- a. **“Manatee County, a Political Subdivision of the State of Florida,” is to be named as an Additional Insured in respect to:** Liability arising out of activities performed by or on behalf of the Successful Proposer, his agents, representatives, and employees; products and completed operations of the Successful Proposer; or automobiles owned, leased, hired or borrowed by the Successful Proposer. The coverage shall contain no special limitation(s) on the scope of protection afforded to the COUNTY, its officials, employees or volunteers.
In addition to furnishing a Certificate of Insurance, the Successful Proposer shall provide the endorsement that evidences Manatee COUNTY being listed as an Additional Insured. This can be done in one of two ways: (1) an endorsement can be issued that specifically lists “Manatee County, a Political Subdivision of the State of Florida,” as Additional Insured; or, (2) an endorsement can be issued that states that all Certificate Holders are Additional Insured with respect to the policy.
- b. The Successful Proposer'S insurance coverage shall be primary insurance with respect to the COUNTY, its officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officials, employees or volunteers shall be excess of Successful Proposer's insurance and shall be non-contributory.
- c. The insurance policies must be on an occurrence form.

Workers' Compensation and Employers' Liability Coverages

The insurer shall agree to waive all rights of subrogation against the COUNTY, its officials, employees and volunteers for losses arising from work performed by the Successful Proposer for the COUNTY.

II. General Insurance Provisions Applicable to All Policies

1. Prior to the execution of contract, or issuance of a Purchase Order, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this contract remains in effect, Successful Proposer shall furnish the COUNTY with a Certificate(s) of Insurance (using an industry accepted certificate form, signed by the Issuer, with applicable endorsements, and containing the solicitation or contract number, and title or description) evidencing the coverage set forth above and naming “Manatee County, a Political Subdivision of the State of Florida” as an Additional Insured on the applicable coverage(s) set forth above.
2. If the policy contains an aggregate limit, confirmation is needed in writing (letter, email, etc.) that the aggregate limit has not been eroded to procurement representative when supplying Certificate of Insurance. In addition, when requested in writing from the COUNTY, Successful Proposer will provide the COUNTY with a certified copy

of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:

Manatee County, a Political Subdivision of the State of Florida
Attn: Risk Management Division
1112 Manatee Avenue West, Suite 969
Bradenton, FL 34205

3. The project's solicitation number and title shall be listed on each certificate.
4. Successful Proposer shall provide thirty (30) days written notice to the Risk Manager of any cancellation, non-renewal, termination, material change, or reduction in coverage of any insurance policies to procurement representative including solicitation number and title with all notices.
5. Successful Proposer agrees that should at any time Successful Proposer fail to meet or maintain the required insurance coverage(s) as set forth herein, the COUNTY may terminate this contract.
6. The Successful Proposer waives all subrogation rights against COUNTY, a Political Subdivision of the State of Florida, for all losses or damages which occur during the contract and for any events occurring during the contract period, whether the suit is brought during the contract period or not.
7. The Successful Proposer has sole responsibility for all insurance premiums and policy deductibles.
8. It is the Successful Proposer'S responsibility to ensure that his agents, representatives and subcontractors comply with the insurance requirements set forth herein. Successful Proposer shall include his agents, representatives, and subcontractors working on the project or at the worksite as insured under its policies, or Successful Proposer shall furnish separate certificates and endorsements for each agent, representative, and subcontractor working on the project or at the worksite. All coverages for agents, representatives, and subcontractors shall be subject to all of the requirements set forth to the procurement representative.
9. All required insurance policies must be written with a carrier having a minimum A.M. Best rating of A- FSC VII or better. In addition, the COUNTY has the right to review the Successful Proposer's deductible or self-insured retention and to require that it be reduced or eliminated.
10. Successful Proposer understands and agrees that the stipulated limits of coverage listed herein in this insurance section shall not be construed as a limitation of any potential liability to the COUNTY, or to others, and the COUNTY'S failure to request evidence of this insurance coverage shall not be construed as a waiver of Successful Proposer'S obligation to provide and maintain the insurance coverage specified.
11. Successful Proposer understands and agrees that the COUNTY does not waive its immunity and nothing herein shall be interpreted as a waiver of the COUNTY'S rights, including the limitation of waiver of immunity, as set forth in Florida Statutes 768.28, or any other statutes, and the COUNTY expressly reserves these rights to the full extent allowed by law.
12. No award shall be made until the Procurement Division has received the Certificate of Insurance in accordance with this section.

BONDING REQUIREMENTS

Bid Bond/Certified Check. By submitting a proposal, the Successful Proposer agrees should its proposal be accepted, **to execute the form of Agreement and present the same to COUNTY for approval within ten (10) calendar days after notice of intent to award.** The Successful Proposer further agrees that failure to execute and deliver said form of Agreement **within ten (10) calendar days** will result in damages to COUNTY and as guarantee of payment of same a bid bond/certified check shall be enclosed within the submitted sealed proposal in the amount of five (5%) percent of the total amount of the proposal. The Successful Proposer further agrees that in case the Successful Proposer fails to enter into an Agreement, as prescribed by COUNTY, the bid bond/certified check accompanying the proposal shall be forfeited to COUNTY as agreed liquidated damages. If COUNTY enters into an agreement with a Successful Proposer, or if COUNTY rejects any and/or all proposals, accompanying bond will be promptly returned.

Payment and Performance Bonds. Prior to commencing work, the Successful Proposer shall obtain, for the benefit of and directed to COUNTY, a Payment and Performance Bond satisfying the requirements of Florida Statutes § 255.05, covering the faithful performance by the Successful Proposer of its obligation under the Contract Documents, including but not limited to the construction of the project on the project site and the payment and obligations arising thereunder, including all payments to Subcontractors, laborers, and materialmen. The surety selected by the Successful Proposer to provide the Payment and Performance Bond shall be approved by COUNTY prior to issuance of such Bond, which approval shall not be unreasonably withheld or delayed provided that surety is rated A- or better by Best's Key Guide, latest edition.

Failure to provide the required bonds on the prescribed form may result in Successful Proposer being deemed nonresponsive. Bonds must be in the form prescribed in Florida Statutes § 255.05, and must not contain notice, demand or other terms and conditions, including informal pre-claim meetings, not provided for in Florida Statutes § 255.05.

Bonds shall be in an amount equal to 100% of the contract price issued by a duly authorized and nationally recognized surety company, authorized to do business in the State of Florida, satisfactory to COUNTY. Surety shall be rated as "A-" or better by Best's Key Guide, latest edition. The attorney-in-fact who signs the bonds must file with the bonds, a certificate and effective dated copy of power-of-attorney. Payment and Performance Bonds shall be issued to "Manatee County, a political subdivision of the State of Florida", **within ten (10) calendar days after issuance of notice of intent to award.**

In addition, pursuant to Florida Statutes § 255.05(1)(b), Florida Statutes, prior to commencing work, the Successful Proposer shall be responsible and bear all costs associated to record the Payment and Performance Bond with the Manatee County Clerk of the Circuit Court. A certified copy of said recording shall be furnished to the Procurement Division upon filing. Pursuant to Florida Statutes § 255.05(1)(b), Florida Statutes, COUNTY will make no payment to the Successful Proposer until the Successful Proposer has complied with this paragraph.

Furnishing Payment and Performance Bonds shall be requisite to execution of an Agreement with COUNTY. Said Payment and Performance Bonds will remain in force for the duration of this Agreement with the premiums paid by the Successful Proposer. Failure of the Successful Proposer to execute such Agreement and to supply the required bonds shall be just cause for cancellation of the award. COUNTY may then contract with the next lowest, responsive and responsible Successful Proposer or re-advertise this RFP.

Failure of COUNTY at any time to require performance by the Successful Proposer of any provisions set out in the resulting Agreement will in no way affect the right of COUNTY, thereafter, to enforce those provisions.

**FORM 8, INSURANCE STATEMENT
RFQ NO. 24-TA005178DJ**

THE UNDERSIGNED has read and understands the insurance requirements applicable to any Agreement resulting from this solicitation and shall provide the insurances required in this RFQ within ten (10) days from the date of Notice of Intent to Award.

Proposer Name: _____ Date: _____

Signature
(Authorized
Official): _____

Printed Name/Title: _____

Insurance Agency: _____

Agent Name: _____ Agent Phone: _____

Return this fully executed form with your Proposal.

FORM 9, INDEMNITY AND HOLD HARMLESS

MANATEE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA

The Successful Proposer shall indemnify and hold harmless County, its officers, and employees from liabilities, damages, losses, and costs, including but not limited to reasonable attorney’s fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Successful Proposer, its personnel, design professionals and other persons employed or utilized by the Successful Proposer in the performance of the Agreement, including without limitation, defects in design, or errors or omissions that result in material cost increases to County. Such indemnification shall include the payment of all valid claims, losses, and judgments of any nature whatsoever in connection therewith and the payment of all related fees and costs. County reserves the right to defend itself with its own counsel or retained counsel at Successful Proposer’s expense.

Signature of Authorized Official of Proposer: _____

Title: Date: _____

Project Number and /or Name: _____

Insurance Agent: _____

Acknowledgement:

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____ [FULL LEGAL NAME], who is

Personally known to me

OR

has produced _____ as identification.

Notary Signature _____

Print Name _____

Seal

Return this fully executed form with your Proposal.

SECTION E, EXHIBITS

Exhibit 1, Scope of Services

Exhibit 2, Proposal Response

Exhibit 3, Record Drawings

Exhibit 4, Southwest Wastewater Master Plan

Exhibit 5, Property Record

Exhibit 6, Sample Agreement

EXHIBIT 1, SCOPE OF SERVICES

RFQ NUMBER 24-TA005178DJ

1.01 GENERAL INFORMATION AND BACKGROUND

The County is seeking proposals from qualified firms to furnish and install approximately 2,100 linear feet (LF) of new 21-inch and 24-inch influent gravity main into Lift Station 36A. Sizing to be confirmed by design engineer based on latest flow projections considering site redevelopment. Install new connections as needed. Replace Lift Station 36A in a new location with upsized lined wet well, new pumps, and all necessary electrical and instrumentation components per the County's standards. Apply wet well liner and replace wet well top slab at Lift Station 33A. Replace the Bayshore on the Lakes Lift Station in a new location including upsized wet well, new pumps, upsized 8-inch discharge piping, and all necessary electrical and instrumentation components per the County's standards.

It is the County's expectation to contract with a qualified firm to provide the County with the design, engineering, and construction management services for the proposed Design-Build Project which will be constructed at the following locations:

**2990 26th Street West, 3722 16th Street West and Lake Bayshore Drive
Bradenton, Florida**

This project is for site work, survey, engineering design, and construction under a single prime contract for a cost of the work plus design-builder's fee with a Guaranteed Maximum Price (GMP).

The name of the project is: Lift Stations 33A, 36A and Bayshore on the Lakes Improvements.

1.02 PROJECT RATIONALE AND BACKGROUND

This project improvements are based on Project SW-7 from the Southwest Wastewater Collection Master Plan to address capacity issues at Lift Station 36A and Bayshore on the Lakes and corrosion issues at Lift Station 33A.

1.03 SCOPE OF WORK

The Design-Build team shall provide the following for the required force main replacement and related work, but not limited to:

1. Lift Station 36A (RTU#241) Replacement

Lift station 36A is located at 3722 16th St W, Bradenton, FL 34205. It is currently a duplex lift station with 40 HP pumps (Hydromatic S6L4000M4-4DS) that struggles to keep up with wet weather flow events. The lift station is located just out of the right-of-way and the County has purchased a parcel of land to replace the existing station with a new station designed to Manatee County standards.

The design consultant will need to complete hydraulic model to determine the new size of the pumps required at the new station as well as the new wet well size for

additional storage capacity. The new station will need to be designed to the Manatee County standards and include a new wet well, pumps, piping, valves, electrical, instrumentation and controls, and a new genset. The existing genset at the lift station will be removed. The force main was replaced in 2023 and the lift station replacement will need to connect to the new force main just outside of the station.

Gravity Line Replacement 855 LF 24" PVC and 1320 LF 21" PVC

In the 2018 wastewater masterplan hydraulic capacity issues were determined with the gravity sewer system leading to lift station 36A. From manhole #6239 to manhole #2798 the 855 LF of 18" VCP gravity main is recommended to be upsized to 24" PVC. From manhole #16778 to manhole #2798 the 1320 LF of 15" VCP is recommended to be upsized to 21" PVC. The design consultant will be responsible to verify the sizing and hydraulic capacity of the gravity main and production construction plans for replacement.

Lift Station 33A (RTU#238) Rehabilitation

Lift station 33A is located at 26th St W/33rd Ave W, South Bradenton, FL 34205. It is currently a duplex lift station with 7.5 HP pumps (Hydromatic S4M750M3-4DS). The engineering consultant will be responsible to provide construction plans to replace the top slab of the lift station and reline the interior of the wet well. This will include a bypassing plan of the lift station.

Lift Station Bayshore on the Lake (RTU #101)

2. Lift station Bayshore on the Lake is located at 3600 Lake Bayshore Dr, Bradenton, FL 34205. It is currently a duplex lift station with 13 HP pumps (Homa AMX434-235/13P/C). The lift station is located in the parking lot of the apartment complex and the County has purchased a 50' x 50' parcel of land to the west of the existing lift station in the greenspace to replace the existing station.
3. The design consultant will need to complete hydraulic model to determine the new size of the pumps required at the new station as well as the new wet well size. No additional flow is anticipated to be added to this station. The new station will need to be designed the Manatee County standards and include a new wet well, pumps, piping (to be upsized from 6-inch to 8-inch), valves, electrical, instrumentation and controls. In addition, approximately 200' of 8-inch force main will be required to connect to the existing force main that was replaced in 2023. The force main extension will need to be within the existing Manatee County utility easement.
4. Coordinate and permit all work in Mantee County ROW with Mantee County Public Works.
5. Utility coordination shall be conducted utilizing the FDOT 30%/60%/90%/100% design milestone RGB process, to include all utilities and Mantee County involvement.
6. Obtain all necessary permits required for proposed work and certify complete.
7. Provide a Property Acquisition Team to provide insight and opinion for any contemplated acquisition of easement or property during design; and assist in final acquisition.
8. The project schedule will include considerations for maintenance of flows, including seasonal variations, to minimize impact to the other County facilities, including the treatment plant.

Other considerations during the project include, but not limited to:

9. Construction sequencing.
10. Coordination with County operations staff. County staff will be responsible for opening and closing of valves and also determining if plant impacts proposed to facilitate the project are adequate.
11. Minimization of impact to the multi modal public, plan to address inquiries, and coordinate with communities whose service may be temporarily impacted by the work
12. Maintenance of Flows is preferred versus by-pass pumping.

Phased Deliverables (based on Standards from A.I.A. and D.B.I.A.)

Design-build team shall deliver for County review and approval: 30% Schematic Design, 60% Design Development with Outline Specifications, 90% Construction Documents with full set of Specifications and a 100% permit set. Each deliverable shall include estimated pricing until the final GMP.

1.04 GENERAL REQUIREMENTS

Professional services for design-build should include, but may not be limited to, utility engineering design, survey and geotechnical testing as required, necessary permits and fees, construction engineering inspection (CEI) services and record drawing certification.

1.05 CODES AND STANDARDS

The Manatee County Wastewater Collection & Transmission System is regulated through the FDEP. Also, the County maintains the Southwest Wastewater Collection System Master Plan (see Attachment D). Relevant regulatory codes and standards that govern the operation and design of this system include but are not limited to:

- Florida Administrativa Code (F.A.C)
 - Chapter 62-604 (Collection Systems and Transmission Facilities)
- Manatee County Public Works Standards - Part 1. Utilities Standards Manual BCC Approved 2/25/2020, or latest version.
- National Electric Code (NEC, NFPA 70)
- Occupational Safety and Health Act (OSHA).
- National Electrical Safety Code (NESC).
- Florida Building Code, including Local County amendments.
- Florida Building Commission (FBC), latest version where applicable:

Various other standards and codes that were not listed may apply to particular equipment. Specific equipment will have the relevant standards and codes provided in the contract specifications. Common, general standards that cover a variety of equipment that will be included in this project include;

- Underwriters' Laboratories (UL).
- American National Standards Institute (ANSI).
- National Electrical Manufacturer's Association (NEMA).
- American Society for Testing and Materials (ASTM).

1.06 PROJECT MANAGEMENT AND SCHEDULE

Professional services for design-build should include, but may not be limited to, meeting minutes for Design and Construction activities, providing paperwork for direct material purchases, preconstruction services for pricing, creating a master project schedule for design, permitting, and construction.

1.07 ESTIMATED PROJECT COMPLETION DATE

The estimated project completion schedule is 24 months from the project design kick-off meeting.

1.08 ESTIMATED PROJECT COST

The County has budgeted the project design and construction cost at approximately \$9 million, which includes design, construction (including Sitework) and soft costs.

END OF EXHIBIT 1

EXHIBIT 2, PROPOSAL RESPONSE

This section identifies specific information which must be contained within the Proposal response and the order in which such information should be organized. The information each Proposer provides will be used to determine those Proposers with the background, experience and capacity to perform the scope of services as stated in this RFQ and which Proposer(s) best meets the overall needs of the County. For more information on the evaluation process, refer to Section B, Evaluation of Responses.

2.01 INFORMATION TO BE SUBMITTED

The contents of each Response will be organized and arranged with tabs in the same order as listed below and with the same TAB numbers. The Response should contain sufficient detail to permit the County to conduct a meaningful evaluation. However, overly elaborate responses are not requested or desired.

2.02 RESPONSE FORMAT

TAB 1 - INTRODUCTION

Include the following in Tab 1 of the Response.

1. A cover page that identifies Proposer, the RFQ by title and the RFQ number.
2. An introductory letter/statement that describe your Response in summary form (limit 2 pages).
3. A table of contents.

TAB 2 – MINIMUM QUALIFICATION REQUIREMENTS

In Tab 2 submit the information and documentation requested that confirms Proposers meets the following minimum qualification requirement(s):

1. Must be registered with the State of Florida, Division of Corporations to do business in Florida.

No documentation is required. The County will verify registration.

2. Proposer or its subcontractor(s) must possess current, valid licenses and certifications required under Florida Statute to perform services of general contractor, engineer, and architect, as is applicable to the design and construction of the Force Main 33A, 36A, and Bayshore on the Lake Replacements.

Submit information and documentation from the issuing agency that confirms Proposer and/or its subcontractor(s) meet the following:

- a. **Certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered**

- building contract as the qualifying agent; or**
- b. Certified under Section 471.023, Florida Statutes, to practice or to offer to practice engineering; or**
 - c. Certified under Section 481.219, Florida Statutes, to practice or to offer to practice architecture.**
3. Proposer or its subcontractor have completed (which means that final pay application has been processed) a minimum of three (3) Force Main Replacement projects consisting of a minimum of 5000 linear feet of 16” diameter or larger pipe since February 1, 2015.
- a. Identify who was contracted to complete the project (Proposer or subcontractor)**
 - b. Project name and location**
 - c. Client/Organization name**
 - d. Contact name**
 - e. Contact phone**
 - f. Contact email**
 - g. Project dates (Start/End)**
4. Proposer Is NOT listed on the Florida State Board of Administration, Scrutinized List of Prohibited Companies.
- No documentation is required. The County will verify.**
5. Proposer is not on the Florida Suspended or Debarred Vendor List
- No documentation is required. The County will verify.**
6. Proposer is not on the Federal Convicted Vendor or Excluded Parties list (SAM/EPLS)
- No documentation is required. The County will verify.**
7. Proposer is not on the Florida Department of Transportation Contractor Suspended List
- No documentation is required. The County will verify.**
8. If Proposer is submitting as a joint venture, it must have filed the required documents with the Florida Department of Business and Professional Regulation as required by Florida Statute Section 489.119, prior to the Due Date and Time.
- If Proposer is a joint venture, provide a copy of Proposer’s approved filing with the Florida Department of Business and Professional Regulation.**

9. Proposer has no reported conflict of interests in relation to this RFQ.

If no conflicts of interests are present, Bidder must submit a fully completed copy of Form 4.

If there is a potential conflict of interest, on a separate page submit a statement to that affect and disclose the name of any officer, director or agent who is an employee of the County. Disclose the name of any County employee who owns, directly or indirectly, any interest in Bidder's firm or any of its branches.

TAB 3 – FORMS

Provide the completed and executed Forms listed below in Tab 3.

- Form 1, Acknowledgement of Addenda
- Form 2, Response Signature Form
- Form 3, Public Contracting and Environmental Crimes Certification
- Form 4, Conflict of Interest Disclosure
- Form 5, Non-Collusion Affidavit
- Form 6, Truth in Negotiation Certification
- Form 7, Scrutinized Company Certification
- Form 8, Insurance Statement
- Form 9, Indemnity and Hold Harmless

TAB 4 - TRADE SECRETS

Pursuant to Section A.28, Trade Secrets, in Tab 4 identify any trade secret being claimed. Proposer must submit purported trade secret as follows:

1. Trade secret material must be segregated, within the applicable TAB, from the portions of the Response that are not being declared as trade secret. NOTE: Responses cannot be designated as 'Proprietary' or 'Confidential' in their entirety.
2. Proposer shall cite, for each trade secret being claimed, the Florida Statute number which supports the designation.
3. Proposer shall offer a brief written explanation as to why information claimed as trade secret fits the cited Statute.
4. Proposer shall provide an additional electronic copy of its Response that redacts all designated trade secrets.

TAB 5 - PROPOSER STATEMENT OF ORGANIZATION (LIMIT 5 DOUBLE SIDED PAGES)

In Tab 5, provide information and documentation on Proposer as follows:

1. Legal contracting name including any dba.
2. State of organization or incorporation.
3. Ownership structure of Proposer's company.
(e.g., Sole Proprietorship, Partnership, Limited Liability Corporation, Corporation)
4. Federal Identification Number.
5. A fully completed (signed and dated) copy of Proposer's W-9.
6. Contact information for Proposer's corporate headquarters and local office (if different)
NOTE: local is defined as Manatee, DeSoto, Hardee, Hillsborough, Pinellas or Sarasota counties.
 - a. Address
 - b. County, State, Zip
 - c. Phone
 - d. Number of years at this location
7. List of officers, owners and/or partners, or managers of the firm. Include names, addresses, email addresses, and phone numbers.
8. Provide supporting documentation from the certifying agent indicating Proposer is a certified Minority-owned Business Enterprise, if applicable.
9. Contact information for Proposer's primary and secondary representatives during this RFQ process to include the following information:
 - a. Name
 - b. Phone
 - c. E-mail
 - d. Mailing Address
 - e. County, State, Zip
10. Provide a brief summary regarding any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its partners, employees or subcontractors is or has been involved within the last three years.
11. Provide details of any ownership changes to Proposer's organization in the past three years or changes anticipated within six months of the Due Date and Time (e.g., mergers, acquisitions, changes in executive leadership).

TAB 6 – RESPONDENT AND TEAM’S EXPERIENCE (MAXIMUM 30 PONITS AND 25 DOUBLE SIDED PAGES)

In Tab 6, provide details of Proposer and its team’s experience to include the following:

1. Provide a summary of Proposer’s background, size and years in business.
2. Describe Proposer’s experience in design-build projects for other government agencies, particularly those within Florida.
3. Describe Proposer’s experience in design-build projects for large diameter gravity sewer line rehabilitation or replacement projects, particularly those within an FDOT right of way.
4. Describe Proposer’s experience for completing similar projects in FDOT Roadways, to include the 30%/60%/90%/100% milestone RGB process.
5. Identify and include information regarding experience and qualifications of Proposer’s key staff to be assigned to the services. Include a resume for each with the name of the firm(s) for their current and previous employers, their full names, professional credentials (e.g., certifications and/or licenses), and roles and duties which the individuals will provide to the County. Include the address of their current primary office location, email address and phone number.
6. Identify the design-professional (architect or engineer) to provide services for this project, if other than Proposer, and include details of their experience with design-build projects for large diameter sewer line rehabilitation or replacement projects.
7. Identify the general contractor to provide services for this project, if other than Proposer, and include details of their experience with design-build projects for large diameter sewer line rehabilitation or replacement projects.
8. Identify any proposed sub-contractors to accomplish the work. Include the company name, the name of the individual(s) to be assigned, and an overview of their experience and qualifications applicable to their role in the provision of design-build services for the County.
9. Describe any significant or unique accomplishments, recognition, or awards received by Proposer, its key personnel, or its subcontractors for previous similar services.
10. Provide a minimum of five (5) client references for design or construction work performed by Proposer. The qualifying projects should have been constructed using either design-bid-build, construction manager at risk, or design-build methods, who are agreeable to responding to an inquiry by the County. References should include the following information:
 - a. Client name
 - b. Client address
 - c. Client contact name
 - d. Client contact phone and fax numbers
 - e. Client contact email address
 - f. Brief description of work (1-2 sentences)
 - g. Performance period (start/end dates)
 - h. Total dollar value of contract

(Remainder of this page intentionally left blank)

TAB 7 – APPROACH (MAXIMUM 20 POINTS AND 14 DOUBLE SIDED PAGES)

In Tab 7, provide Proposer’s project approach to include the following:

1. A narrative of the project approach and an explanation of how this approach meets County objectives and requirements as specified in this RFQ.
2. An explanation of Proposer’s technical ability to perform all facets of the scope of services defined in Attachment A. If more than one Proposer is jointly filing a Response, details must be provided to clearly demonstrate individual roles and responsibility for all components of the project.
3. Details of implementation plan and schedule. Provide an implementation schedule for each component of services (e.g., design, demolition, construction). NOTE: Proposer must commit to a timetable of no more than 24 months for substantial completion of the project.
4. Provide a narrative of the methodology for engaging with County representatives in-the-course of performing the duties.
5. Proposer shall thoroughly explain:
 - a. Its accessibility in the areas of availability for meetings, general communications, coordination, and supervision.
 - b. How Proposer physically plans on attending pre-scheduled meetings.
 - c. How Proposer plans on ensuring accessibility and availability during the term of the Agreement.
6. Proposer’s Risk Management and Safety Plan that includes a list of risks related to the provision of services and Proposer’s proposed mitigation procedures for each item.
7. Include a detailed description of the Proposer’s safety plan to control the environment of the work site during on site construction.
8. Provide sample reports Proposer has previously used on other design-build projects.
9. Proposers are encouraged to propose the use of as many environmentally preferable, sustainable, ‘green’ products, materials and supplies to promote a safe and healthy environment. Submit a summary of Proposer’s environmental sustainability initiatives and any products, materials or supplies that are proposed for the County’s work that have documented evidence of reducing adverse effects on the environment.
10. Provide a statement on company letterhead and signed by an authorized official of Proposer attesting to its commitment to meet the County’s time and budget requirements for all assigned work.
11. Submit any additional information not previously requested which Proposer believes would assist County in the evaluation of Proposer’s approach to provide the required services.

TAB 8 - ORGANIZATIONAL STRUCTURE AND CAPACITY (MAXIMUM 30 POINTS AND 12 DOUBLE SIDED PAGES)

In Tab 8, provide Proposer's project approach to include the following:

1. Identify whether or not the Proposer is a certified minority business enterprise and include a copy of the applicable document from the certifying agency.
2. Submit details of Proposer's staffing resources, at the location that will provide services to the County as well as corporately; by discipline and the number of personnel within each discipline.
3. Detail the location of the managing office and what plans will be adopted to ensure County citizens receive consideration for employment; and suppliers located within the County will be used for the acquisition of goods and services needed to perform the scope of services.
4. If Proposer's staffing resources includes sub-consultants, submit the name of the firm(s) who will perform each discipline. If more than one firm is listed for a discipline, then label which firm is the primary firm for that discipline. Firms may perform more than one discipline.
5. Submit an organizational diagram clearly identifying key personnel as well as other staffing resources who are designated to provide services to the County. For each individual in the organization diagram, include each individual's name, title, firm and indicate their functional relationship to each other.
6. If Proposer is teaming with other entities to provide the required goods and services, detail any prior similar work any two or more team members have jointly performed.
7. If a joint venture is proposed, provide an affidavit attesting to the formulation of the joint venture and provide proof of incorporation as a joint venture or a copy of the formal joint venture agreement between all joint venture parties, indicating their respective roles, responsibilities, and levels of participation in the project.
8. An explanation, in general terms, of Proposers' financial capacity to perform the scope of services. If Proposer is jointly filing a Response with other entities, details must be provided to demonstrate financial capacity of each entity.
9. Provide a statement on company letterhead and signed by a company official authorizing a County auditor and/or financial analysts access to your financial records, including all records prepared by an independent firm, or the financial records of other entities for which you have ownership interest. Such access will occur at the primary location of the Proposer, or such other location as may be agreed, for the purposes of verifying financial representations, and/or to review and assess the historical and current financial capacity of Proposer's business entity and its expected ability to meet ongoing financial obligations related to the required services, if awarded a contract. If an audit is conducted, the County's audit and/or financial analysts will report their findings in a summary report to the Procurement Official, which will be placed in the Response files for subsequent use, review, and discussions during evaluations.
10. Disclose any ownership interest in other entities proposed for services. This ownership disclosure includes ownership by the Proposer through a parent, subsidiary or holding company or any other form of business entity. Submit entity names and the percent of ownership for each.
11. Detail Proposer and any subcontractor's current workloads and any projected changes

- to the workload within the next six months.
12. Provide a list of construction, design, or engineering projects that have been awarded to the Proposer and any of their subcontractors by Manatee County in the past two years since February 1, 2022. Include the following information for each:
 - a. Name of the project.
 - b. Date of award.
 - c. Dollar value of the design work.
 13. Provide details of Proposer's capacity to bond the project. Include a letter of intent from Proposer's bonding company which confirms Proposer's bonding capacity.
 14. Submit any additional information not previously requested which Proposer believes would assist County in the evaluation of Proposer's capacity to provide the required services.

(Remainder of this page intentionally left blank)

TAB 9 - SIMILAR COMPLETED PROJECTS (MAXIMUM 20 POINTS AND 10 DOUBLE SIDED PAGES)

Provide a list of up to five (5) design-build projects, particularly those of large diameter gravity sewer replacement or rehabilitation projects, which Proposer has provided and successfully completed since February 1, 2015. At least one project should be one that the proposer's design-build team has completed together. Include the following information:

- a. Organization/Owner name
- b. Address (County/State)
- c. Project date (Start/End)
- d. Proposer's role in the project (e.g., prime/lead, sub)
- e. Scope of work (Brief description 1-2 sentences)
- f. Total project costs

NOTE: Representative photographs and exhibits supporting the above projects are permitted as an attachment to this section.

END OF EXHIBIT 2

EXHIBIT 3, RECORD DRAWINGS

NOTE - This attachment is uploaded as a separate document on the Procurement page of the County website with the solicitation document and available for download.

EXHIBIT 4, SOUTHWEST WASTEWATER MASTER PLAN

NOTE - This attachment is uploaded as a separate document on the Procurement page of the County website with the solicitation document and available for download.

EXHIBIT 5, PROPERTY RECORD



Parcel ID: 5057630509
 Ownership: MANATEE COUNTY
 Owner Type: SEWER INFRASTRUCTURE
 Mailing Address: MANATEE COUNTY, PO BOX 1000, BRADENTON FL 34206

Situs Address: LAKE BAYSHORE DR, BRADENTON, FL 34205
 Jurisdiction: UNINCORPORATED MANATEE COUNTY
 Tax District: 0302; CEDAR HAMMOCK FIRE CONTROL DISTRICT
 CRA/TIF District: SW; SOUTHWEST COUNTY IMPROVEMENT DISTRICT
 Market Area: 73; COMMERCIAL-WEST OF I-75

Sec/Twp/Rge: 30-35S-17E
 Neighborhood: 7003; BRADENTON-SOUTH OF RIVER, WEST OF I-75

Parcel Type: REAL PROPERTY
 Parcel Created: 08/29/2020
 Split/Combine: SPLIT
 Parent Parcel ID: 5057610007
 Map Number: 5BS3

Land Use: 8600; COUNTY
 Land Size: 0.0460 Acres or 2,004 Square Feet



DESCRIPTION

COM AT THE SW COR OF THE SE 1/4 OF SEC 3, TWN 35S, RNG 17E, MANATEE COUNTY, FL; TH ALG THE S LN OF SD SE 1/4, N 89 DEG 49 MIN 15 SEC E, A DIST OF 698.88 FT; TH ALG A SLY EXT OF THE ELY R/W LN OF 24TH ST W AND SD ELY R/W LN PER OR BK 2778 PG 163 PRMCF, N 00 DEG 04 MIN 30 SEC E, A DIST OF 951.12 FT; TH DEPARTING SD ELY R/W LN S 89 DEG 34 MIN 41 SEC E, A DIST OF 1005.77 FT; TH N 00 DEG 25 MIN 19 SEC E, A DIST OF 40 FT TO THE POB; TH CONT N 00 DEG 25 MIN 19 SEC E, A DIST OF 40 FT; TH S 89 DEG 34 MIN 41 SEC E, A DIST OF 50 FT; TH S 00 DEG 25 MIN 26 SEC W, A DIST OF 40 FT; TH N 89 DEG 34 MIN 41 SEC W, A DIST OF 50 FT TO THE POB; CONT A DIST AREA OF 2000 SQ FT M/L. (INST#202041033212) PI #50576.3050/9

2023 FINAL CERTIFIED VALUES			
	County	School	IndSpcDist Municipality
Land Value:	13,610	13,610	13,610
Improvement Value:	0	0	0
Total Market Value:	13,610	13,610	13,610
Land Classified Agricultural:	0	0	0
Classified Use Value:	0	0	0
Classified Use Savings:	0	0	0
Ineligible for 10% Cap:	0	13,610	0
Eligible for 10% Cap Next Year:	0	0	0
Eligible for 10% Cap This Year:	13,610	0	13,610
10% Cap Savings:	8,110	0	8,110
Ineligible for SOH Cap:	13,610	13,610	13,610
Eligible for SOH Cap Next Year:	0	0	0
Eligible for SOH Cap This Year:	0	0	0
SOH Cap Savings:	0	0	0
Assessed Value:	5,500	13,610	5,500
Exempt Value:	5,500	13,610	5,500
Taxable Value:	0	0	0

2024 Exemptions	Type	BegYear	County	School	IndSpcDist	Municipality
8500 MANATEE COUNTY	GOVERNMENTAL	2020	6,050	13,610	6,050	0

2024 SPECIAL ASSESSMENTS	
FD02 CEDAR HAMMOCK FIRE CONTROL DISTRICT	0.00

LAND INFORMATION																
#	Type	Code	Ag	Ex	Sqft	Acres	Rate	Value	Actual	Effect	Depth	Table	Factor	Override	Influences	Zoning
1	S	308	No	0%	2,004	0	4	13,610					1.0			GC

SALES INFORMATION								
Salekey	Sale Date	Book/Page/Inst #	Instrument Type	V / I	Qual Code	Sale Price	Grantee	Grantor
2300601	3/25/2020	202041033212	WARRANTY DEED	V	18	\$6,000	MANATEE COUNTY	BAYSHORE ON THE LAKE CONDO APT OWNERS

EXHIBIT 6, SAMPLE AGREEMENT

DESIGN-BUILD AGREEMENT

for

[PROJECT NAME]

between

MANATEE COUNTY (AS OWNER)

and

_____ (AS DESIGN-BUILDER)

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SAMPLE

**DESIGN-BUILD AGREEMENT
FOR
[PROJECT NAME]**

THIS AGREEMENT (“Agreement”) is made and entered into by and between Manatee County, a political subdivision of the State of Florida, referred to herein as “Owner”, and the firm of _____, incorporated in the State of _____ and registered and licensed to do business in the State of Florida (License # _____), referred to herein as “Design-Builder”, for the following project: _____.

WHEREAS, the Owner intends to design, engineer and construct [PROJECT DESCRIPTION], the improvements being hereinafter referred to and defined as the “Project”; and

WHEREAS, Owner desires Design-Builder to provide the professional design, architectural, engineering and construction management services requisite to the implementation of the Project, and

WHEREAS, in response to Owner’s Request for Proposal No. _____ (the “RFP”), Design-Builder has submitted its Proposal (the “RFP Proposal”) to provide the services.

NOW THEREFORE, the Owner and the Design-Builder, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows:

**ARTICLE I
GENERAL PROVISIONS**

1.1 Owner’s Criteria. This Agreement is based on the criteria set forth in this Section 1.1, hereinafter referred to as the “Owner’s Criteria”.

(Note the disposition for the following items by inserting the requested information or a statement such as “not applicable” or “unknown at time of execution.” If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert “see Owner’s design documents” where appropriate)

A. Owner’s Program. The Owner’s program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

B. Owner's Design Requirements. The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

C. Physical Characteristics. The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports, site, boundary and topographic surveys, traffic and utility studies, availability of public and private utilities and services, legal description of the site, etc.)

D. Budget. The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

E. Milestones. The Owner's design and construction milestone dates:

- (1) Design phase milestone dates:
- (2) Submission of Design-Builder's Proposal:
- (3) Phased completion dates:
- (4) Substantial Completion dates:
- (5) Other milestone dates:

F. Architect/Engineer, Consultants and Contractors. The Owner requires the Design-Builder to retain the necessary Architect/Engineer, Consultants and Contractors at the Design-Builder's cost. The Architect/Engineer and any Consultants performing design services shall be selected in accordance with the process set forth in Section 287.055, Florida Statutes.

G. Additional Criteria. Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as sustainability, energy efficiency, and historic preservation requirements.)

H. Laws and Regulations. The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

I. Criteria Changes. If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article VI.

J. Digital Transmissions. If Instruments of Service or any other information or documentation is to be transmitted in digital form, the parties shall endeavor to establish necessary protocols governing such transmissions.

1.2 Project Team.

A. Owner's Representative. The Owner identifies the following representative in accordance with Section 7.1.A:

(List name, address and other information.)

B. Reviewers. The person or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

(List name, address and other information.)

C. Consultants. The Owner will retain the following consultants and separate contractors:

(List discipline, scope of work, and, if known, identify by name and address.)

D. Design-Builder's Representative. The Design-Builder identifies the following representative in accordance with Section 3.1.B:

(List name, address and other information.)

E. Changes to Representatives. Neither the Owner's nor the Design-Builder's representative shall be changed without ten (10) days' written notice to the other party.

1.3 Dispute Resolution. Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Article XVII hereof.

1.4 Definitions. For purposes of this Agreement, the following terms shall have the following meanings.

A. Acceptance: The acceptance of the Project into the Owner's operating public infrastructure.

B. Application for Payment: The form accepted by the Owner's Representative which is to be used by Design-Builder in requesting progress or final payments and which is to include such supporting documentation as is required by the Design-Build Documents.

C. Architect/Engineer: The Architect/Engineer is the person or entity providing design services for the Design-Builder for all or a portion of the work, and is lawfully licensed to practice architecture or engineering in the State of Florida. The Architect/Engineer is referred to throughout the Design-Build Documents as if singular in number.

D. Certificate for Payment: The form approved and accepted by the Owner, which is to be used by the Owner in approving progress payments or final payment.

E. Change Order: A written order signed by the Owner and the Design-Builder authorizing a change in the Project Plans and/or Specifications and, if necessary, a corresponding adjustment in the Contract Sum and/or Contract Time, pursuant to Article VI.

F. Consultant: A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. A Consultant shall be lawfully licensed to provide the required professional services in the State of Florida.

G. Contractor: A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. A Contractor shall be lawfully licensed in the State of Florida. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

H. Days: Calendar days except when specified differently. When time is referred to in the Design-Build Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or legal holiday, such day will be omitted from the computation.

I. Defective: When modifying the term “Work”, referring to Work that is unsatisfactory, faulty or deficient, or does not conform to the Design-Build Documents, or that does not meet the requirements of any inspection, reference standard, test or approval referred to in the Design-Build Documents, or that has been damaged prior to Owner’s Representative approval of final payment (unless responsibility for the protection thereof has been assumed by Owner).

J. Design-Build Amendment: The Design-Build Amendment is the amendment to this Agreement to be executed pursuant to Section 4.4.C., hereof, accepting the Design-Builder’s Proposal and setting forth the Contract Sum or guaranteed maximum price, and the Contract Time and Substantial Completion Date.

K. Design-Build Documents: The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the “Agreement”), other documents listed in this Agreement, and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual

relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

L. Design-Builder: The Design-Builder is the firm identified in the preamble of this Agreement, and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

M. Design-Builder’s Proposal: The proposal to be prepared by Design-Builder and submitted to Owner pursuant to and in accordance with Section 4.4 of this Agreement.

N. Field Directive: A written order issued by the Owner or Design-Builder which orders minor changes in the Work, but which does not involve a change in the Contract Sum or the Contract Time.

O. Final Completion Date: The date upon which the Project is fully constructed and all Work required on the Project and Project Site is fully performed as verified in writing by the Owner’s Representative.

P. Force Majeure: Those conditions constituting excuse from performance as described in and subject to the conditions set forth in Article XIV.

Q. Instruments of Service: Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect/Engineer and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

R. Modification: A Modification is (1) a written amendment to the Agreement signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Work Directive Change.

S. Notice to Proceed: Written notice by Owner (after execution of the Design-Build Amendment) to the Design-Builder fixing the date on which the Contract Time will commence to run and on which Design-Builder shall start to perform (ten (10) days from date of such notice) its obligations under the Design-Build Documents.

T. Owner: Manatee County, a political subdivision of the State of Florida.

U. Owner’s Representative: The Deputy Director, Project Management, Public Works Department, or such other individual designated by the County Administrator, from time to time, pursuant to written notice in accordance with the Design-Build Documents.

V. Payment and Performance Bond: The Payment and Performance Bond security posted pursuant to Section 3.1.S to guarantee payment and performance by the Design-Builder of its obligations hereunder.

W. Procurement Ordinance: The Manatee County Procurement Code, Chapter 2-26 of the Manatee County Code of Laws, as amended from time to time.

X. Progress Report: A report to Owner that includes all information required pursuant to the Design-Build Documents and submitted in accordance with Section 3.1.J, hereof.

Y. Project: The total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by Owner and by separate contractors. For the purposes of the Design-Build Documents, the term Project shall include all areas of proposed improvements and all areas which may reasonably be judged to have an impact on the Project.

Z. Project Costs: The costs incurred by the Design-Builder to plan, construct and equip the Project and included within, and paid as a component of, the Contract Sum.

AA. Project Manager: _____, the Design-Builder's primary representative or such other individual designated by Design-Builder, subject to the prior written consent of Owner.

BB. Project Plans and Specifications: The one hundred percent (100%) construction drawings and specifications, and any changes, supplements, amendments or additions thereto approved by the Owner, which shall also include any construction drawings and final specifications required for the repair or construction of the Project, as provided herein.

CC. Project Schedule: The schedule and sequence of events for the commencement, progression and completion of the Project, developed pursuant to Section 3.1.K, as such schedule may be amended as provided herein.

DD. Project Site: The site depicted in the Project Plans and Specifications, inclusive of all rights of way, temporary construction easements or licensed or leased sovereign lands.

EE. Punch List Completion Date: The date set forth in the Certificate of Substantial Completion when all previously incomplete or unsatisfactory items, as identified by the Design-Builder, the Architect/Engineer and/or the Owner shall be completed by the Design-Builder in a competent and workmanlike manner.

FF. Purchasing Official: The individual designated to serve as the Manatee County Purchasing Official pursuant to the Procurement Ordinance.

GG. Submittal: A submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

HH. Substantial Completion and Substantially Complete: The stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy or completion and other permits, approvals, licenses, and other documents from any governmental authority which are necessary for the beneficial occupancy of the Project.

II. Substantial Completion Date: The date on which the Project is required to be Substantially Complete, as evidenced by (i) the Owner's signature on a Certificate of Substantial Completion, (ii) written Acceptance of the Project by the Owner, and (iii) approvals of any other authority as may be necessary or otherwise required.

JJ. Unit Price Work: Work to be paid for on the basis of unit prices.

KK. Work: The term "Work" means the design, construction, and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

LL. Work Directive Change: A written directive to Design-Builder, issued on or after the effective date of the Agreement and signed by Owner's Representative, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed or responding to emergencies.

ARTICLE II COMPENSATION AND PROGRESS PAYMENTS

2.1 Compensation for Work Performed Prior to Execution of Design-Build Amendment.

A. Timing and Rate. Unless otherwise agreed in writing pursuant to a Modification, payments for Work performed prior to execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any sustainability services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

B. Hourly Rates. The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect/Engineer, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position

Rate

2.2 Compensation for Reimbursable Expenses Prior to Execution of Design-Build Amendment.

A. Reimbursable Expenses. Reimbursable expenses are in addition to compensation set forth in Section 2.1.A and 2.1.B and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect/Engineer, Consultants, and Contractors, as follows:

- (1) Transportation and authorized out-of-town travel and subsistence;
- (2) Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- (3) Fees paid for securing approval of authorities having jurisdiction over the Project;
- (4) Printing, reproductions, plots, standard form documents;
- (5) Postage, handling and delivery;
- (6) Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- (7) Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- (8) All taxes levied on professional services and on reimbursable expenses; and
- (9) Other Project-related expenditures, if authorized in advance by the Owner.

B. Administrative Fee. For Reimbursable expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect/Engineer, Consultants and Contractor incurred, plus an administrative fee of Percent (___%) of the expenses incurred.

C. Records. Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two (2) years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

2.3 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment. For the Design-Builder’s performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

2.4 Local Government Prompt Payment Act. Payments shall be made by Owner in accordance with the requirements of Section 218.735, Florida Statutes.

ARTICLE III GENERAL REQUIREMENTS OF THE WORK

3.1 General.

A. Licensing Requirements. The Design-Builder shall comply with any applicable licensing requirements in the State of Florida.

B. Design-Builder Representative. The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder’s behalf with respect to the Project (the Design-Builder’s “authorized representative”).

C. Compliance with Design-Build Documents. The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

D. Compliance with Applicable Laws. The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

E. Violations. Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner’s Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner’s Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article VI.

F. Acts or Omissions. The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect/Engineer, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

G. Periodic Meetings. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

H. Qualified and Licensed Professionals. When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect/Engineer and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

I. Permits and Approvals. The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary permits and approvals of governmental authorities having jurisdiction over the Project.

J. Progress Reports. The Design-Builder shall keep the Owner informed of the progress and quality of the Work. Monthly, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written Progress Reports to the Owner, showing estimated percentages of completion and other information identified below:

- (1) Work completed for the period;
- (2) Project schedule status;
- (3) Submittal schedule and status report, including a summary of outstanding Submittals;
- (4) Responses to requests for information to be provided by the Owner;
- (5) Approved Change Orders and Change Directives;
- (6) Pending Change Order and Change Directive status reports;
- (7) Tests and inspection reports;
- (8) Status report of Work rejected by the Owner;
- (9) Status of Claims previously submitted in accordance with Article XVII;
- (10) Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- (11) Current Project cash-flow and forecast reports; and
- (12) Additional information as agreed to by the Owner and Design-Builder.

In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its Progress Reports:

- (1) Design-Builder's work force report;
- (2) Equipment utilization report; and
- (3) Cost summary, comparing actual costs to updated cost estimates.

K. Design-Builder's Schedules. The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

L. Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect/Engineer Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect/Engineer, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project, and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect/Engineer, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

M. Design-Builder's Submittals.

- (1) Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (i) be coordinated with the Design-Builder's schedule provided in Section 3.1.K, (ii) allow the Owner reasonable time to review Submittals, and (iii) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.
- (2) By providing Submittals the Design-Builder represents to the Owner that it has (i) reviewed and approved them, (ii) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (iii) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

- (3) The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.
- (4) The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.
- (5) All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

N. Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements shall be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

O. Royalties, Patents and Copyrights.

- (1) The Design-Builder shall pay all royalties and license fees.
- (2) The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contactors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process

or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

P. Indemnification.

- (1) To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, its officers, agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Design-Builder, a subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.1.P.
- (2) The Design-Builder's duty to indemnify and hold harmless the Owner in P. (1) above shall extend to fines, penalties and costs incurred by the Owner as related to any enforcement action taken by local, state, regional or federal regulatory entities. The Owner may deduct any of such fines, penalties and costs as described in this subsection from any unpaid amounts then or thereafter due the Design-Builder. Any of such fines, penalties and costs not so deducted from any unpaid amounts due the Design-Builder shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at the maximum allowable rate.
- (3) In claims against any person or entity indemnified under this Section 3.1.P by an employee of the Design-Builder, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.1.P(1) shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

- (4) With respect to design, engineering and architectural services, the Design-Builder shall indemnify and hold harmless the Owner and its officers, agents and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Design-Builder, its design professionals and other persons employed or utilized by the Design-Builder in the performance of this Agreement, including without limitation, defects in design, or errors or omissions of the Design-Builder that result in material cost increases to the Owner.
- (5) The Design-Builder shall defend the Owner in any action, lawsuit mediation or arbitration arising from the alleged negligence, recklessness or intentionally wrongful conduct of the Design-Builder and other persons employed or utilized by the Design-Builder in the performance of the Work. So long as Design-Builder, through its own counsel, performs its obligation to defend the Owner pursuant to this Section, Design-Builder shall not be required to pay the Owner's costs associated with the Owner's participation in the defense.

Q. Contingent Assignment of Agreements. Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that:

- (1) assignment is effective only after termination of the Agreement by the Owner for cause, pursuant to Sections 16.1 D or 16.2 B, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect/Engineer, Consultants, and Contractors whose agreements are accepted for assignment; and
- (2) assignment is subject to the prior rights of the surety, if any, obligated under bond.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the assigned agreement. Upon such assignment, if the Work has been suspended for more than thirty (30) days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension. Upon such assignment to the Owner under this Section 3.1.Q, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under this agreement.

R. Design-Builder's Insurance. If and to the extent required by the RFP, the Design-Builder shall furnish insurance coverage for (but not necessarily limited to) workers' compensation, commercial general liability, professional liability, auto liability, excess liability, and builder's risk. The Design-Builder shall furnish to the Owner all appropriate policies and Certificate(s) of Insurance as set forth in Exhibit C.

S. Payment and Performance Bond. Prior to the construction commencement date, the Design-Builder shall obtain, for the benefit of and directed to the Owner, a Payment and Performance Bond satisfying the requirements of Section 255.05, Florida Statutes, covering the faithful performance by the Design-Builder of its obligations under the Design-Build Documents, including but not limited to the construction of the Project on the Project site and the payment of all obligations arising thereunder, including all payments to the Architect/Engineer, Contractors, Consultants, laborers, and materialmen. The surety selected by the Design-Builder to provide the Payment and Performance Bond shall be approved by the Owner prior to the issuance of such Bond, which approval shall not be unreasonably withheld or delayed provided that the surety is rated A or better by Best's Key Guide, latest edition. For Changes in the Work that result in an increase in the Contract Sum, Owner reserves the right to require the Design-Builder to secure and deliver additive riders to the Payment and Performance bond.

ARTICLE IV WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

4.1 General.

A. Information Submitted. Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

B. Advice and Recommendations. The Design-Builder shall advise the Owner on proposed site use and improvements, selections of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

4.2 Evaluation of the Owner's Criteria.

A. Meetings. The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

B. Report. After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include:

- (1) allocations of program functions, detailing each function and their square foot areas;
- (2) a preliminary estimate of the cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- (3) a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner, anticipated date for the Design-Builder's Proposal, and dates of periodic design review sessions with the Owner; and
- (4) the following:

(List additional information, if any, to be included in the Design-Builder's written report.)

C. Review. The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the preliminary design as described in Section 4.3. The consent to proceed shall not be construed to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

4.3 Preliminary Design.

A. Submittal. Upon the Owner's issuance of a written consent to proceed under Section 4.2.C, the Design-Builder shall prepare and submit a preliminary design to the Owner. The preliminary design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- (1) confirmation of the allocations of program functions;
- (2) site plan;
- (3) building plans, sections and elevations;
- (4) structural systems;
- (5) selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- (6) outline of specifications or sufficient drawing notes describing construction materials.

The preliminary design may include some combination of physical study models, perspective sketches, or digital modeling.

B. Review. The Owner shall review the preliminary design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-

Builder's Proposal. The preliminary design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

4.4 Design-Builder's Proposal.

A. Submittal. Upon the Owner's issuance of a written consent to proceed under Section 4.3.B, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- (1) a list of the preliminary design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- (2) the proposed Contract Sum, including the compensation method and, if based upon the cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's fee, and other items that comprise the Contract Sum;
- (3) the proposed date the Design-Builder shall achieve Substantial Completion;
- (4) an enumeration of any qualifications and exclusions, if applicable;
- (5) a list of the Design-Builder's key personnel, Contractors and suppliers; and
- (6) the date on which the Design-Builder's Proposal expires.

B. Local Conditions. Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

C. Design-Build Amendment. If the Owner and Design-Builder agree on a Design-Builder's Proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of the agreement.

ARTICLE V WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

5.1 Construction Documents.

A. Preparation; Consistency. Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

B. Owner Review. The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly

notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

5.2 Construction.

A. Commencement. Except as permitted in Section 5.2.B, construction shall not commence prior to execution of the Design-Build Amendment.

B. Pre-Amendment Commencement. If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal reflected in the Design-Build Amendment.

C. Supervision and Control. The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Agreement, unless the Design-Build Documents give other specific instructions concerning these matters.

D. Inspection. The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

5.3 Labor and Materials.

A. Design-Builder to Provide. Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

B. Substitutions. When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article VI.

C. Management of Employees. The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

5.4 Taxes. The Design-Builder shall pay applicable sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

5.5 Permits, Fees, Notices and Compliance with Laws.

A. Permits. Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

B. Unanticipated Site Conditions. If, during the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article VI.

5.6 Allowances.

A. Allowances. The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection. Unless otherwise provided in the Design-Build Documents,

- (1) allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (2) the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- (3) whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (i) the difference between actual costs and the allowances under Section 5.6.A.(1) and (ii) changes in Design-Builder's costs under Section 5.6.A.(2).

B. Owner Selections. The Owner shall make selections of materials and equipment with reasonable promptness, for allowances requiring Owner selection.

5.7 Key Personnel, Contractors and Suppliers.

A. Identification. Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within fourteen (14) days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

B. Owner Objections. The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

C. Changes. If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within fourteen (14) days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

5.8 Documents and Submittals at the Site. The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.B as a record of the Work as constructed.

5.9 Use of Site. The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

5.10 Cutting and Patching. The Design-Builder shall not cut, patch, or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written

consent of the Owner and of such separate contractor. Such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

5.11 Cleanliness.

A. Cleanliness. The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, tools, construction equipment, machinery and surplus materials from and about the Project Site.

B. Reimbursement to Owner. If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to offset its costs incurred against payments to the Design-Builder.

5.12 Access to Work. The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

5.13 Construction by Owner or by Separate Contractors.

A. Owner's Right to Perform Construction and to Award Separate Contracts.

- (1) The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with the portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article XVII.
- (2) When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term, "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.
- (3) The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the

construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

- (4) Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Agreement.

5.14 Mutual Responsibility.

A. Coordination of Site Uses. The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

B. Reporting of Discrepancies or Defects. If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

C. Costs. The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

D. Damages. The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.E.

E. Cutting and Patching by Owner. The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

5.15 Owner's Right to Clean Up. If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining

the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE VI CHANGES IN THE WORK

6.1 General. Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Contract, by Change Order, Work Directive Change or order for a minor change in the Work, subject to the limitations stated in this Article VI and elsewhere in the Design-Build Documents. A Change Order or Work Directive Change shall be based upon agreement among the Owner and Design-Builder; an order for a minor change in the Work may be issued by the Design-Builder alone. Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order, Work Directive Change or order for a minor change in the Work.

6.2 Minor Changes in the Work. The Owner or Design-Builder shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such change will be effected by written order signed by the Design-Builder and shall be binding on the Owner and Design-Builder. The Design-Builder shall abide by and perform such minor changes. Such changes shall be effected by a Field Directive or a Work Directive Change. Documentation of changes shall be determined by the construction team, and displayed monthly in the progress reports. Because such changes shall not affect the Contract Sum to be paid to the Design-Builder, they shall not require a Change Order pursuant to Section 6.6.

6.3 Emergencies. In any emergency affecting the safety of persons or property, the Design-Builder shall act at its discretion to prevent threatened damage, injury, or loss. Any increase in the Contract Sum or extension of time claimed by the Design-Builder because of emergency Work shall be determined as provided in Section 6.6. However, whenever practicable, the Design-Builder shall obtain verbal concurrence of the Owner's authorized representative where the act will or may affect the Contract Sum or Contract Time.

6.4 Concealed Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or

both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If Design-Builder disputes the Owner's determination or recommendation, it may proceed as provided in Article XVII.

6.5 Change Orders; Adjustments to Contract Sum.

The increase or decrease in the Contract Sum resulting from a change authorized pursuant to the Design-Build Documents shall be determined:

- (1) By mutual acceptance of a lump sum amount properly itemized and supported by sufficient substantiating data, to permit evaluation by the Owner; or
- (2) By unit prices stated in the Agreement or subsequently agreed upon; or
- (3) By any other method mutually agreeable to Owner and Design-Builder.

If Owner and Design-Builder are unable to agree upon increases or decreases in the Contract Sum and the Design-Builder certifies that the work needs to be commenced prior to any such agreement, the Design-Builder, provided it receives a written Change Order signed by or on behalf of the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Owner will establish an estimated cost of the Work and the Design-Builder shall not perform any Work whose cost exceeds that estimated without prior written approval by the Owner. In such case, the Design-Builder shall keep and present in such form as the Owner may prescribe an itemized accounting, together with appropriate supporting data of the increase in overall costs of the Project. The amount of any decrease in the Contract Sum to be allowed by the Design-Builder to the Owner for any deletion or change which results in a net decrease in costs will be the amount of the actual net decrease.

6.6 Unit Prices. If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices and Contract Sum shall be equitably adjusted.

6.7 Owner-Initiated Changes. Without invalidating the Agreement and without notice to any Surety, Owner may, at any time, order additions, deletions or revisions in the Work. These will be authorized by a written amendment, a Field Directive, a Change Order, or a Work Directive Change, as the case may be. Upon receipt of any such document, Design-Builder shall promptly proceed with the Work involved which will be performed under the applicable conditions

of the Design-Build Documents (except as otherwise specifically provided). A Work Directive Change may not change the Contract Sum or the Contract Time; but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Sum or Contract Time.

6.8 Unauthorized Work. Design-Builder shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time with respect to any Work performed that is not required by the Design-Build Documents.

6.9 Defective Work. Owner and Design-Builder shall execute appropriate Change Orders (or written amendments) covering changes in the Work which are ordered by Owner because of Defective Work, or which may be required because of acceptance of Defective Work, without adjustment to the Contract Sum.

6.10 Estimates for Changes. At any time Owner may request a quotation from Design-Builder for a proposed change in the Work. Within twenty-one (21) calendar days after receipt, Design-Builder shall submit a written and detailed proposal for an increase or decrease in the Contract Sum or Contract Time for the proposed change. Owner shall have twenty-one (21) calendar days after receipt of the detailed proposal to respond in writing. The proposal shall include an itemized estimate of all costs and time for performance that will result directly or indirectly from the proposed change. Unless otherwise directed, itemized estimates shall be in sufficient detail to reasonably permit an analysis by Owner of all material, labor, equipment, subcontracts, overhead costs and fees, and shall cover all Work involved in the change, whether such Work was deleted, added, changed or impacted. Notwithstanding the request for quotation, Design-Builder shall carry on the Work and maintain the progress schedule. Delays in the submittal of the written and detailed proposal will be considered non-prejudicial.

6.11 Form of Proposed Changes. The form of all submittals, notices, Change Orders and other documents permitted or required to be used or transmitted under the Design-Build Documents shall be determined by the Owner. Standard Owner forms shall be utilized.

6.12 Changes to Contract Time. The Contract Time may only be changed pursuant to a Change Order or a written amendment to the Design-Build Documents. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered by the party making the claim to the other party. Notice of the extent of the claim with supporting data shall be delivered within fifteen (15) days from detection or beginning of such occurrence and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled because of the occurrence of said event. The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of Design-Builder. Such delays shall include, but not be limited to, acts or neglect by Owner or others performing additional Work; or to fires, floods, epidemics, abnormal weather conditions or acts of God. Failure to deliver a written notice of claim within the requisite 15-day period shall constitute a waiver of the right to pursue said claim.

**ARTICLE VII
OWNER'S RIGHTS AND RESPONSIBILITIES**

7.1 General.

A. Authority of Owner's Representative. The Owner shall designate in writing a representative (the Owner's "authorized representative") who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

B. Owner Decisions. The Owner shall render decisions in a timely manner and in accordance with Design-Builder's schedule agreed to by the Owner.

7.2 Information and Services Required of the Owner.

A. Promptness. The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

B. Inspections and Reports. The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials, or environmental and subsurface conditions, and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

C. Land Uses. The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

D. Cooperation; Permitting. The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

E. Reliance Upon Reports. The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

F. Notice of Defects. If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

G. Communications. Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

H. Subsurface Conditions. Unless required by the Design-Build Documents to be provided by the Design-Builders, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground erosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

7.3 Submittals.

A. Review of Submittals. The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner. In the absence of an approved submittal schedule, the Owner shall accomplish the review of submittals and return same to Design-Builder within fourteen (14) days. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.M, 3.1.N, and 5.2.C. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

B. Notice of Non-Conformance. Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

7.4 Site Visits; Limitations. Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make onsite inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

7.5 Design-Builder Performance; Limitations. The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect/Engineer, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

7.6 Rejection of Work. The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect/Engineer, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

7.7 Completion Dates. The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

7.8 Owner's Right to Stop Work. If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity.

7.9 Owner's Right to Carry Out the Work. If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. Notwithstanding any other provisions in the Design-Build Documents to the contrary, the Owner shall be entitled to bring a direct action in the Circuit Court to recover such costs.

7.10 Governmental Body. The Design-Builder recognizes that the Owner is a governmental body with certain procedural requirements to be satisfied. The Design-Builder has and will make reasonable allowance in its performance of services for such additional time as may be required for approvals and decisions by the Owner and any other necessary government agency.

7.11 Pre-Completion Acceptance. The Owner shall have the right to take possession of and use any completed portions of the Work, although the time for completing the entire Work

or such portions may not have expired, but such taking possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Design-Build Documents.

7.12 Ownership and Use of Drawings, Specifications and Other Instruments of Service.

- (1) The Design-Builder and the Design-Builder's Consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Project Plans and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Design-Builder's and the Design-Builder's Consultants' reserved rights.
- (2) The Design-Builder, Contractors and material or equipment suppliers are authorized to use and reproduce the drawings and specifications provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Project Plans and Specifications or other Instruments of Service. Notwithstanding the reserved rights set forth in Section 7.12(1), the Owner shall have the right at all times to use the Design-Builder's and the Design-Builder's Consultants Instruments of Service in execution of the Work. The Owner's rights of usage shall survive any termination of this Agreement pursuant to Article XVI. The Design-Builder, Contractors, and material or equipment suppliers may not use the drawings or specifications on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

**ARTICLE VIII
TIME**

8.1 Progress and Completion.

A. Time Limits. Time limits are of the essence in this Agreement. By executing the Design-Build Amendment, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

B. Insurance. The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance required by this Agreement. The Contract Time shall not be adjusted because of the Design-Builder's failure to obtain insurance required under this Agreement.

C. Substantial Completion. The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.2 Delays and Extensions of Time.

A. Owner Delays. If the Design-Builder is delayed at the time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner, or by changes ordered in the Work by the Owner, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution pursuant to Article XVII hereof, or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

B. Claims for Delay. Claims relating to time shall be made in accordance with applicable provisions of Article XVII.

C. Liquidated Damages for Delay. Time is of the essence in the Design-Build Documents and all obligations thereunder. If the Design-Builder fails to achieve Substantial Completion of the Work within the Contract Time and as otherwise required by the Design-Build Documents, the Owner shall be entitled to retain or recover from the Design-Builder, as liquidated damages and not as a penalty, the sum of \$ _____ per calendar day, commencing upon the first day following expiration of the Contract Time and continuing until the actual date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur because of delayed completion of the Work. The Owner may deduct liquidated damages as described in this paragraph from any unpaid amounts then or thereafter due the Design-Builder under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Design-Builder shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at the maximum allowable rate.

ARTICLE IX PAYMENT APPLICATIONS AND PROJECT COMPLETION

9.1 Contract Sum. The Contract Sum shall be stated in the Design-Build Amendment.

9.2 Schedule of Values. Where the Contract Sum is based on a stipulated sum or guaranteed maximum price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment, shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

9.3 Applications for Payment.

A. Submittal; Requirements. At least ten (10) days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect/Engineer, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

- (1) As provided in Section 6.6, Applications for Payment may include requests for payment because of changes in the Work that have been promptly authorized by Work Directive Changes, or by interim determinations of the Owner but not yet included in Change Orders.
- (2) Applications for Payment shall not include requests for portions of the Work for which the Design-Builder does not intend to pay the Architect/Engineer Consultant, Contractor, and material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

B. Payments for Services Provided. Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise to protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

C. Warranties. The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which a Certificate for Payment has been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect/Engineer, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 Certificates for Payment. The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.A.

9.5 Decisions to Withhold Certification.

A. Grounds. The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of:

- (1) defective Work, including design and construction, not remedied;
- (2) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- (3) failure of the Design-Builder to make payments properly to the Architect/Engineer Consultants, Contractors or others, for services, labor, materials or equipment;
- (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (5) damage to the Owner or a separate contractor;
- (6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- (7) repeated failure to carry out the Work in accordance with the Design-Build Documents.

B. Cure. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

C. Issuance of Joint Checks. If the Owner withholds certification for payment under Section 9.5.A(3), the Owner may, at its sole option, issue joint checks to the Design-Builder or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

9.6 Progress Payments.

A. Payment. After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

B. Payments by Design-Builder. The Design-Builder shall pay each Architect/Engineer Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect/Engineer Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect/Engineer, Consultant, Contractor, and other person or entity. The Design-Builder shall, by appropriate agreement with each Architect/Engineer, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect/Engineer, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subcontractors in a similar manner.

C. Requests for Information. The Owner will, on request and if practicable, furnish to the Architect/Engineer, a Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken by the Owner on account of portions of the Work done by such Architect/Engineer, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder.

D. Evidence of Payment by Design-Builder. The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect/Engineer Consultants, Contractors, and other persons or entities providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact the Architect/Engineer Consultants and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

E. Payments to Suppliers. Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.B, 9.6.C and 9.6.D.

F. Acceptance of Work. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

9.7 Failure of Payment. If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up.

9.8 Substantial Completion.

A. Substantial Completion Defined. Substantial Completion shall be as defined in Section 1.4. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

B. List of Corrections. When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

C. Inspections; Corrections. Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

D. Certificate of Substantial Completion. When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion, establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the Punch List Completion Date. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

E. Submittal; Acceptance. The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

9.9 Partial Occupancy or Use.

A. Right of Owner. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in

writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.B. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

B. Inspection. Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

C. Occupancy Shall Not Constitute Acceptance. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

9.10 Final Completion and Final Payment.

A. Timely Inspection. Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Agreement fully performed, the Owner will, subject to Section 9.10.B, promptly issue a final Certificate for Payment.

B. Conditions of Final Payment. Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner:

- (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
- (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect;
- (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents;
- (4) consent of surety, if any, to final payment;
- (5) as-built drawings and an as-constructed record copy of the Design-Build Documents, marked to indicate field changes and selections made during construction;
- (6) all warranty documentation, manufacturer's warranties, product data, maintenance and operations manuals (including parts and technical manuals), and all schematics and handbooks; and

- (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, security interests, or encumbrances, arising out of the Agreement, to the extent and in such form as may be designated by the Owner.

C. Delay; Partial Payment. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

D. Waiver of Owner Claims. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- (1) claims arising out of the Agreement and unsettled;
- (2) failure of the Work to comply with the requirements of the Design-Build Documents; and
- (3) terms of special warranties required by the Design-Build Documents.

E. Waiver of Design-Builder Claims. Acceptance of final payment by the Design-Builder shall constitute a waiver of Claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE X PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs. The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement.

10.2 Safety of Persons and Property.

A. Prevention. The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to:

- (1) employees on the Work and other persons who may be affected thereby;
- (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-

- Builder or the Architect/Engineer, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- (3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designed for removal, relocation or replacement during construction.

B. Compliance with Laws and Regulations. The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

C. Safeguards. The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities of the safeguards and protections.

D. Hazardous Materials. When use of storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

E. Remedy of Damages and Losses. The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.A(2) and 10.2.A(3), caused in whole or in part by the Design-Builder, the Architect/Engineer, a consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.A(2) and 10.2.A(3), except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner or by anyone for whose acts the Owner may be liable. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.P.

F. Safety Officer. The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

G. Loading of Construction Site. The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

H. Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding

twenty one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

10.3 Hazardous Materials.

A. Design-Builder Responsibility. The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

B. Owner Responsibility. Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such materials or substances or who are to perform the task of removal or safe containment of such materials or substances. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

C. Indemnity by Owner. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect/Engineer Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.A and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall also indemnify the Design-Builder for all cost and expense thereby incurred.

D. Limitations on Indemnity. The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handing of such materials or substances.

E. Indemnity by Design-Builder. The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.A, except to the extent that the cost and expense are due to the Owner's fault or negligence.

10.4 Emergencies. In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE XI UNCOVERING AND CORRECTION OF WORK

11.1 Uncovering of Work. The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

11.2 Correction of Work.

A. Duty to Correct Work. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

B. After Substantial Completion.

(1) In addition to the Design-Builder's obligations under Section 3.1.N, if, within three years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.A, or by terms of an applicable special

warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the three-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

- (2) The three-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

C. Removal of Uncorrected Work. The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

D. Cost of Damage to Construction. The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

E. No Limitation on Obligation to Correct Work. Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the three-year period for correction of Work as described in Section 11.2.B relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligation other than specifically to correct the Work.

11.3 Acceptance of Nonconforming Work. If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE XII
ACCOUNTING RECORDS; OWNERSHIP OF DOCUMENTS

12.1 Accounting Records. Records of expenses pertaining to all services performed shall be kept in accordance with generally accepted accounting principles and procedures.

12.2 Inspection and Audit. The Design-Builder's records shall be open to inspection and subject to examination, audit, and/or reproduction during normal working hours by the Owner's agents or authorized representatives to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the Design-Builder or any of its payees during the performance of the Work. These records shall include, but not be limited to, accounting records, written policies and procedures, Subcontractor files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, Change Order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to the Design-Build Documents. They shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Design-Build Documents. For the purpose of such audits, inspections, examinations and evaluations, the Owner's agents or authorized representatives shall have access to said records from the effective date of this Agreement, for the duration of Work, and until three (3) years after the date of final payment by the Owner to the Design-Builder pursuant to the Design-Build Documents.

12.3 Access. The Owner's agents or authorized representatives shall have access to the Design-Builder's facilities and all necessary records to conduct audits in compliance with this Article. The Owner's agents or authorized representatives shall give the Design-Builder reasonable advance notice of intended inspections, examinations, and/or audits.

12.4 Ownership of Documents. Upon completion of the Work or termination of this Agreement, all records, documents, tracings, plans, specifications, maps, evaluations, reports, transcripts and other technical data, other than working papers, prepared or developed by the Design-Builder under the Design-Build Documents, shall be delivered to and become the property of the Owner. The Design-Builder at its own expense may retain copies for its files and internal use.

ARTICLE XIII
PUBLIC CONTRACT LAWS

13.1 Equal Opportunity Employment.

A. Employment. The Design-Builder shall not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, disability or age, and will take affirmative action to ensure that all employees and applicants are afforded

equal employment opportunities without discrimination because of race, creed, sex, color, national origin, disability or age. Such action will be taken with reference to, but shall not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of training or retraining, including apprenticeship and on-the-job training.

B. Participation. No person shall, on the grounds of race, creed, sex, color, national origin, disability or age, be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of this Agreement.

13.2 Immigration Reform and Control Act of 1986. Design-Builder acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, located at 8 U.S.C. Section 1324, et seq., and regulations relating thereto. Failure to comply with the above statutory provisions shall be considered a material breach and shall be grounds for immediate termination of this Agreement.

13.3 No Conflict of Interest. The Design-Builder warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Design-Builder to solicit or secure the Design-Build Documents, 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 Design-Builder, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement.

A. No Interest in Business Activity. By accepting award of this Agreement, the Design-Builder, which shall include its directors, officers and employees, represents that it presently has no interest in and shall acquire no interest in any business or activity which would conflict in any manner with the performance of services required hereunder, including without limitation as described in the Design-Builder's own professional ethical requirements. An interest in a business or activity which shall be deemed a conflict includes but is not limited to direct financial interest in any of the material and equipment manufacturers, suppliers, distributors, or contractors who will be eligible to supply material and equipment for the Project for which the Design-Builder is furnishing its services required hereunder.

B. No Appearance of Conflict. The Design-Builder shall not knowingly engage in any contractual or professional obligations that create an appearance of a conflict of interest with respect to the services provided pursuant to the Design-Build Documents. The Design-Builder has provided the Affidavit of No Conflict, incorporated into the Agreement as Exhibit "B", as a material inducement for Owner entering into this Agreement. If, in the sole discretion of the County Administrator or designee, a conflict of interest is deemed to exist or arise during the term of this Agreement, the County Administrator or designee may terminate this Agreement, effective upon the date so stated in a written notice of termination, without penalty to the Owner.

13.4 Truth in Negotiations. By execution of the Design-Build Documents, the Design-Builder certifies to truth-in-negotiations and that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting.

Further, the original Contract Sum and any additions thereto shall be adjusted to exclude any significant sums where the Owner determines the Contract Sum was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. Such adjustments must be made within one (1) year after final payment to the Design-Builder.

13.5 Public Entity Crimes. The Design-Builder is directed to the Florida Public Entity Crimes Act, Section 287.133, Florida Statutes, specifically section (2)(a), and the Owner's requirement that the Design-Builder comply with it in all respects prior to and during the term of this Agreement.

ARTICLE XIV FORCE MAJEURE, FIRE OR OTHER CASUALTY

14.1 Force Majeure.

A. Unavoidable Delays. Delays in any performance by any party contemplated or required hereunder due to fire, flood, sinkhole, earthquake or hurricane, acts of God, unavailability of materials, equipment or fuel, war, declaration of hostilities, revolt, civil strife, altercation or commotion, strike, labor dispute, or epidemic, archaeological excavation, lack of or failure of transportation facilities, or any law, order, proclamation, regulation, or ordinance of any government or any subdivision thereof, or for any other similar cause to those enumerated, beyond the reasonable control and which with due diligence could not have been reasonably anticipated, shall be deemed to be events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any Work or obligation pursuant to the Design-Build Documents for any of the events of Force Majeure stated in this Section 14.1, the date for performance required or contemplated by the Design-Build Documents shall be extended by the number of calendar days such party is actually delayed

B. Concurrent Design-Builder Delays. If a delay is caused for any reason provided in 14.1.A. or as a result of an extension of time provided by Change Order, and during the same time period a delay is caused by Design-Builder, the date for performance shall be extended as provided in 14.1.A. but only to the extent the time is or was concurrent.

C. Notice; Mitigation. The party seeking excuse for nonperformance based on Force Majeure shall give written notice to the Owner, if with respect to the Design-Builder, or to the Design-Builder, if with respect to the Owner, specifying its actual or anticipated duration. Each party seeking excuse from nonperformance based on Force Majeure shall use its best efforts to rectify any condition causing a delay and will cooperate with the other party, except that neither party shall be obligated to incur any unreasonable additional costs and expenses to overcome any loss of time that has resulted.

14.2 Casualty; Actions by Owner and Design-Builder. During the construction period, if the Project or any part thereof shall have been damaged or destroyed, in whole or in part, the Design-Builder shall promptly make proof of loss; and Owner and Design-Builder shall

proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon such damage or destruction. The Design-Builder shall diligently assess the damages or destruction and shall prepare an estimate of the cost, expenses, and other charges, including normal and ordinary compensation to the Design-Builder, necessary for reconstruction of the Project substantially in accordance with the Design-Build Documents. Within fifteen (15) days following satisfaction of the express conditions described in subsections (1), (2) and (3) below, the Design-Builder covenants and agrees diligently to commence reconstruction and to complete the reconstruction or repair of any loss or damage by fire or other casualty to the Project to substantially the same size, floor area, cubic content, and general appearance as prior to such loss or damage:

- (1) Receipt by the Owner or the trustee of the proceeds derived from collection of all valid claims against insurers or others based upon such damage or destruction, and receipt of other sums from any source such that the funds necessary to pay the Project cost and any additions to the Project cost necessitated for repair or reconstruction are available;
- (2) Written agreement executed by the Design-Builder and the Owner, by amendment to the Design-Build Documents or otherwise, authorizing and approving the repair or reconstruction and any additions to the Project cost necessitated thereby, including any required adjustment to the Contract Sum; and
- (3) Final approval by the Owner of the Design-Build Documents for such repair or reconstruction and issuance of any required building permits.

14.3 Approval of Plans and Specifications. The Owner agrees to approve the plans and specifications for such reconstruction or repair if the reconstruction or repair contemplated by such plans and specifications is economically feasible, and will restore the Project, or the damaged portion thereof, to substantially the same condition as prior to such loss or damage, and such plans and specifications conform to the applicable laws, ordinances, codes, and regulations. The Owner agrees that all proceeds of any applicable insurance or other proceeds received by the Owner or the Design-Builder as a result of such loss or damage shall be used for payment of the costs, expenses, and other charges of the reconstruction or repair of the Project.

14.4 Notice of Loss or Damage. The Design-Builder shall promptly give the Owner written notice of any significant damage or destruction to the Project, defined as loss or damage which it is contemplated by Design-Builder will increase the Contract Sum or extend the Substantial Completion Date, stating the date on which such damage or destruction occurred, the then expectations of Design-Builder as to the effect of such damage or destruction on the use of the Project, and the then proposed schedule, if any, for repair or reconstruction of the Project. Loss or damage which the Design-Builder determines will not affect the Contract Sum or Substantial Completion Date will be reported to Owner immediately, and associated corrective actions will be undertaken without delay.

ARTICLE XV
REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 Representations and Warranties of Design-Builder. The Design-Builder represents and warrants as follows:

The Design-Builder is a construction company, organized under the laws of the State of _____, authorized to transact business in the State of Florida, with _____ as the primary qualifying agent. Design-Builder has all requisite power and authority to carry on its business as now conducted, to own or hold its properties, and to enter into and perform its obligations hereunder and under each instrument to which it is or will be a party, and is in good standing in the State of Florida.

Each Contract Document to which the Design-Builder is or will be a party constitutes, or when entered into will constitute, a legal, valid, and binding obligation of the Design-Builder enforceable against the Design-Builder in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

There are no pending or, to the knowledge of the Design-Builder, threatened actions or proceedings before any court or administrative agency, within or without the State of Florida, against the Design-Builder or any partner, officer, or agent of the Design-Builder which question the validity of any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder, or materially adversely affect the financial condition of the Design-Builder.

The Design-Builder has filed or caused to be filed all federal, state, local, or foreign tax returns, if any, which were required to be filed by the Design-Builder, and has paid, or caused to be paid, all taxes shown to be due and payable on such returns or on any assessments levied against the Design-Builder.

Neither Design-Builder nor any agent or person employed or retained by Design-Builder has acted fraudulently or in bad faith or in violation of any statute or law in the procurement of this Agreement.

The Design-Builder shall timely fulfill or cause to be fulfilled all of the terms and conditions expressed herein which are within the control of the Design-Builder or which are the responsibility of the Design-Builder to fulfill. The Design-Builder shall be solely responsible for the means and methods of construction.

It is recognized that neither the Design-Builder nor the Owner has control over the cost of labor, materials, or equipment, over a Contractor's methods of determining bid prices, or over competitive bidding, market, or negotiating conditions.

During the term of the Design-Build Documents, and the period of time that the obligations of the Design-Builder under the Design-Build Documents shall be in effect, the Design-Builder shall cause to occur and to continue to be in effect those instruments, documents, certificates, and events contemplated by the Design-Build Documents that are applicable to, and the responsibility of, the Design-Builder.

The Design-Builder shall assist and cooperate with the Owner and shall accomplish the construction of the Project in accordance with the Design-Build Documents and the Project Plans and Specifications, and will not knowingly violate any laws, ordinances, rules, regulations, or orders that are or will be applicable thereto.

The Design-Builder warrants and guarantees to Owner that all Work will be in accordance with the Design-Build Documents and will not be defective, and that Owner, representatives of Owner and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. Design-Builder shall give Owner timely notice of readiness of the Work for all required approvals and shall assume full responsibility, including costs, in obtaining required tests, inspections, and approval certifications and/or acceptance, unless otherwise stated by Owner.

If any Work (including Work of others) that is to be inspected, tested, or approved is covered without written concurrence of Owner, it must, if requested by Owner, be uncovered for observation. Such uncovering shall be at Design-Builder's expense unless Design-Builder has given Owner timely notice of Design-Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice. Neither observations by Owner nor inspections, tests, or approvals by others shall relieve Design-Builder from Design-Builder's obligations to perform the Work in accordance with the Design-Build Documents.

If the Work is defective, or Design-Builder fails to supply sufficient skilled workers, or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Design-Build Documents, Owner may order Design-Builder to stop the Work, or any portion thereof and terminate payments to the Design-Builder until the cause for such order has been eliminated. Design-Builder shall bear all direct, indirect and consequential costs for satisfactory reconstruction or removal and replacement with non-defective Work, including, but not limited to fees and charges of Owner's consultants, attorneys and other professionals and any additional expenses experienced by Owner due to delays to others performing additional Work and an appropriate deductive Change Order shall be issued. Design-Builder shall further bear the responsibility for maintaining the schedule and shall not be entitled to an extension of the Contract Time or the recovery of delay damages due to correcting or removing defective Work.

If Design-Builder fails within seven (7) days after written notice to correct defective Work, or fails to perform the Work in accordance with the Design-Build Documents, or fails to comply with any other provision of the Design-Build Documents, Owner may correct and remedy any such deficiency to the extent necessary to complete corrective and remedial action. Owner may exclude Design-Builder from all or part of the site, take possession of all or part of the Work,

Design-Builder's tools, construction equipment and machinery at the site or for which Owner has paid Design-Builder but which are stored elsewhere. All direct and indirect costs of Owner in exercising such rights and remedies will be charged against Design-Builder in an amount approved as to reasonableness by Owner and a Change Order will be issued incorporating the necessary revisions.

15.2 Representations of the Owner. To the extent permitted by law, the Owner represents to the Design-Builder that each of the following statements is presently true and accurate:

The Owner is a validly existing political subdivision of the State of Florida.

The Owner has all requisite governmental power and authority to carry on its business as now conducted and to perform its obligations under the Design-Build Documents and each Contract Document contemplated hereunder to which it is or will be a party.

The Design-Build Documents and each document contemplated hereby to which the Owner is or will be a party constitutes, or when entered into will constitute, a legal, valid, and binding obligation of the Owner enforceable against the Owner in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws from time to time in effect which affect creditors' rights generally, and subject to usual equitable principles in the event that equitable remedies are involved.

There are no pending or, to the knowledge of the Owner, threatened actions or proceedings before any court or administrative agency against the Owner which question the validity of the Design-Build Documents or any document contemplated hereunder, or which are likely in any case or in the aggregate to materially adversely affect the consummation of the transactions contemplated hereunder or the financial or corporate condition of the Owner.

The Owner shall use due diligence to timely fulfill or cause to be fulfilled all of the conditions expressed in the Design-Build Documents which are within the control of the Owner or which are the responsibility of the Owner to fulfill.

During the pendency of the Work and while the obligations of the Owner under the Design-Build Documents shall be in effect, the Owner shall cause to occur and to continue to be in effect and take such action as may be necessary to enforce those instruments, documents, certificates and events contemplated by the Design-Build Documents that are applicable to and the responsibility of the Owner.

The Owner shall assist and cooperate with the Design-Builder in accomplishing the construction of the Project in accordance with the Design-Build Documents and the Project Plans and Specifications, and will not knowingly violate any laws, ordinances, rules, regulations, orders, contracts, or agreements that are or will be applicable thereto or, to the extent permitted by law, enact or adopt any resolution, rule, regulation, or order, or approve or enter into any contract or agreement, including issuing any bonds, notes, or other forms of indebtedness, that will result in

the Design-Build Documents or any part thereof, or any other instrument contemplated by and material to the timely and effective performance of a party's obligations hereunder, to be in violation thereof.

ARTICLE XVI TERMINATION OR SUSPENSION

16.1 Termination or Suspension Prior to Execution of the Design-Build Amendment.

A. Design-Builder Suspension of Services. If the Owner fails to make payments to the Design-Builder in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven (7) days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

B. Owner Suspension. If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

C. Termination by Design-Builder for Suspension. If the Owner suspends the Project for more than ninety (90) cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven (7) days' written notice.

D. Termination for Cause. Either party may terminate this Agreement upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

E. Owner Termination for Convenience. The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Design-Builder for the Owner's convenience and without cause.

F. Compensation to Design-Builder. In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work properly performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In

no event shall the Design-Builder's compensation under this Section 16.1.F be greater than the compensation set forth in Section 2.1.

16.2 Termination or Suspension Following Execution of the Design-Build Amendment.

A. Termination by the Design-Builder.

- (1) The Design-Builder may terminate the Agreement if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Design-Builder, the Architect/Engineer a consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:
 - i. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
 - ii. An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
 - iii. Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.A, or because the Owner has not made payment on a Certificate of Payment within the time stated in the Design-Build Documents.
- (2) The Design-Builder may terminate the Agreement if, through no act or fault of the Design-Builder, the Architect/Engineer a consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 16.3. constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred and twenty (120) days in any 365-day period, whichever is less.
- (3) If one of the reasons described in Section 16.2.A(1) or 16.2.A(2) exists, the Design-Builder may, upon seven (7) days' written notice to the Owner, terminate the Agreement and recover from the Owner payment for Work executed, costs incurred by reason of such termination, and damages.
- (4) If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the

progress of the Work, the Design-Builder may, upon seven (7) additional days' written notice to the Owner, terminate the Agreement and recover from the Owner as provided in Section 16.2.A(3).

B. Termination by the Owner for Cause.

- (1) The Owner may terminate the Agreement if the Design-Builder:
 - i. Fails to submit the Design-Builder's Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
 - ii. Repeatedly refuses or fails to supply an Architect/Engineer or enough properly skilled Consultants, Contractors, or workers or proper materials;
 - iii. Fails to make payment to the Architect/Engineer, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
 - iv. Repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
 - v. Is otherwise guilty of substantial breach of a provision of the Design-Build Documents.
- (2) When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven (7) days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:
 - i. Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
 - ii. Accept assignment of the Architect/Engineer, Consultant and Contractor agreements pursuant to Section 3.1.Q; and
 - iii. Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.
- (3) When the Owner terminates the Agreement for one of the reasons stated in this Section 16.2.B, the Design-Builder shall not be entitled to receive further payment until the Work is finished.
- (4) If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly

waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Agreement. Notwithstanding any other provisions of the Design-Build Documents to the contrary, Owner shall have the right to bring a direct action in the Circuit Court to recover such costs and damages.

16.3 Suspension by the Owner for Convenience.

A. Right to Suspend. The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

B. Adjustment to Contract Time. The Contact Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in this Section 16.3. No adjustment shall be made to the extent that:

- (1) Performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- (2) An equitable adjustment is made or denied under another provision of the Agreement.

16.4 Termination by the Owner for Convenience.

A. Right to Terminate. The Owner may, at any time, terminate the Agreement for the Owner's convenience and without cause.

B. Obligation of Design-Builder Upon Termination. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

- (1) Cease operations as directed by the Owner in the notice;
- (2) Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- (3) Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect/Engineer, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

C. Compensation. In case of such termination for the Owner's convenience,

the Design-Builder shall be entitled to receive payment for Work properly executed, and costs incurred by reason of such termination.

ARTICLE XVII CLAIMS AND DISPUTE RESOLUTION

17.1 Claims.

A. Definition. For purposes of this Agreement, a “claim” shall mean a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Agreement. The term “claim” also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Agreement. The responsibility to substantiate Claims shall rest with the party making the claim.

B. Owner to Decide Disputes. The Owner shall reasonably decide all questions and disputes, of any nature whatsoever, that may arise in the execution and fulfillment of the services provided for under the Design-Build Documents, in accordance with the Procurement Ordinance.

C. Finality. The decision of the Owner upon all claims, questions, disputes and conflicts shall be final and conclusive, and shall be binding upon all parties to the Design-Build Documents, subject to judicial review as provided in Section 17.1.F below.

D. No Damages for Delay. If at any time Design-Builder is delayed in the performance of Design-Builder’s responsibilities under the Design-Build Documents as the result of a default or failure to perform in a timely manner by Owner or Owner’s agents or employees, Design-Builder shall not be entitled to any damages except for compensation specifically authorized in Article II. Design-Builder’s sole remedy will be a right to extend the time for performance. Nothing herein shall preclude Design-Builder from any available remedy against any responsible party other than Owner. Design-Builder shall be responsible for liquidated damages for delay pursuant to Section 8.2.C of this Agreement.

E. Permitted Claims Procedure. Where authorized or permitted under the Design-Build Documents, all claims for additional compensation by Design-Builder, extensions of time affecting the Substantial Completion Date, for payment by the Owner of costs, damages or losses due to casualty, force majeure, Project site conditions or otherwise, shall be governed by the following:

- (1) All claims must be submitted as a request for Change Order in the manner as provided in Article VI.
- (2) The Design-Builder must submit a notice of claim to Owner’s authorized representative within fifteen (15) days of when the Design-Builder was or should have been aware of the fact that an occurrence was likely to cause

- delay or increased costs. Failure to submit a claim within the requisite 15-day period shall constitute a waiver of the right to pursue said claim.
- (3) Within twenty (20) days of submitting its notice of claim, the Design-Builder shall submit to the Owner's authorized representative its request for Change Order, which shall include a written statement of all details of the claim, including a description of the Work affected.
 - (4) After receipt of a request for Change Order, the Owner's authorized representative shall deliver to the Contractor, within twenty (20) days after receipt of request, its written response to the claim.
 - (5) In the event the Owner and Design-Builder are unable to agree on the terms of a Change Order, the Owner shall have the option to instruct the Design-Builder to proceed with the Work. In that event, the Owner shall agree to pay for those parts of the Work, the scope and price of which are not in dispute. The balance of the disputed items in the order to proceed will be resolved after completion of the Work, based upon completed actual cost.
 - (6) The rendering of a decision by Owner with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by Owner or Design-Builder of such right or remedies as either may otherwise have under the Design-Build Documents or by laws or regulations in respect of any such claim, dispute or other matter.

F. Contract Claims and Disputes. After completion of the process set forth in Section 17.1.E above, any unresolved dispute under this Agreement shall be decided by the Purchasing Official in accordance with Section 2-26-63 of the Manatee County Code of Laws, subject to an administrative hearing process as provided in Section 2-26-64. The decision of the Board of County Commissioners in accordance with Section 2-26-64 of the Manatee County Code of Laws shall be the final and conclusive County decision subject to exclusive judicial review in circuit court by a petition for certiorari.

G. Claims for Consequential Damages. The Design-Builder and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

- (1) Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons, unless such damages or losses are covered by insurance placed by the Contractor; and
- (2) Damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of

financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article XVI. Nothing contained in this Section 17.1.G shall be deemed to preclude assessment of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

ARTICLE XVIII MISCELLANEOUS PROVISIONS

18.1 Governing Law; Venue. This Agreement shall be governed by the laws of the State of Florida. Venue for any petition for writ of certiorari or other court action allowed by this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida.

18.2 Successors and Assigns. The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 3.2.Q, neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

18.3 Headings and Captions. The headings and captions of articles, sections and paragraphs used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

18.4 Severability. The provisions of this Agreement are declared by the parties hereto to be severable. In the event any term or provision of this Agreement shall be held invalid by a court of competent jurisdiction, such invalid term or provision should not affect the validity of any other term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement. However, if any term or provision of this Agreement is held to be invalid due to the scope or extent thereof, then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

18.5 Attorney's Fees and Costs. In any claim dispute procedure or litigation arising from this Agreement, each party hereto shall be solely responsible for paying its attorney's fees and costs.

18.6 Relationship of the Parties. The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the

Design-Builder's best skill and judgment in furthering the interests of the Owner; to perform all of the Work in a good and workmanlike manner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

18.7 Notices. All notices, comments, consents, objections, approvals, waivers, and elections under this Agreement shall be in writing and shall be given only by hand delivery for which a receipt is obtained, or certified mail, prepaid with confirmation of delivery requested, or by electronic mail with delivery confirmation. All such communications shall be addressed to the applicable addressees set forth below or as any party may otherwise designate in the manner prescribed herein.

To the Owner:

Email: _____

To the Design-Builder:

Email: _____

Notices, comments, consents, objections, approvals, waivers, and elections shall be deemed given when received by the party for whom such communication is intended at such party's address herein specified, or such other physical address or email address as such party may have substituted by notice to the other.

18.8 Public Records Law. The Design-Builder shall comply with the Florida Public Records Act (Chapter 119, Florida Statutes), and shall:

- A. Keep and maintain public records required by the Owner to perform the services called for in this Agreement.
- B. Upon request from the Owner's custodian of public records, provide the Owner 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.
- C. 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 this Agreement and following completion of this Agreement if the Design-Builder does not transfer the records to the Owner.

- D. Upon completion of this Agreement, transfer, at no cost, to the Owner all public records in possession of the Design-Builder or keep and maintain such public records. If the Design-Builder transfers all public records to the Owner upon completion of the Agreement, the Design-Builder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Design-Builder keeps and maintains public records upon completion of the Agreement, the Design-Builder shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Owner, upon request from the Owner's custodian of public records, in a format that is compatible with the information technology systems of the Owner.

IF THE DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE OWNER'S CUSTODIAN OF PUBLIC RECORDS AT 941-748-4501, Ext. 5845; DEBBIE.SCACCIANOCE@MYMANATEE.ORG; POST OFFICE BOX 1000, BRADENTON, FLORIDA 34206.

18.9 Exhibits. Exhibits to this Agreement are as follows:

Exhibit A—Design-Build Amendment

Exhibit B—Affidavit of No Conflict

Exhibit C—Certificate(s) of Insurance

Exhibit D—Payment and Performance Bond

Exhibit E—Standard Forms

- 1—Application for Payment
- 2—Certificate of Substantial Completion
- 3—Final Reconciliation / Warranty / Affidavit
- 4—Change Order

WHEREFORE, the parties hereto have executed this Agreement as of the date last executed below.

Name of Design-Builder

By: _____

Printed Name: _____

Title: _____

Date: _____

MANATEE COUNTY, a political subdivision
of the State of Florida

By: _____

Printed Name: _____

Title: _____

Date: _____

SAMPLE

GENERAL CONDITIONS
of the
CONSTRUCTION AGREEMENT

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GENERAL CONDITIONS

ARTICLE I

DEFINITIONS

1.1 Definitions. For purposes of the Contract Documents, the following terms shall have the following meanings.

A. Acceptance: The acceptance of the Project into the Owner's operating public infrastructure.

B. Application for Payment: The form approved and accepted by the Owner, which is to be used by Contractor in requesting progress payments or final payment and which is to include such supporting documentation as is required by the Contract Documents.

C. Architect/Engineer: _____, a _____ corporation or limited liability company, registered and licensed to do business in the State of Florida, OR _____, an employee of Owner.

D. Change Order: A written order signed by the Owner, the Architect/Engineer and the Contractor authorizing a change in the Project Plans and/or Specifications and, if necessary, a corresponding adjustment in the Contract Sum and/or Contract Time, pursuant to Article V.

E. Construction Services: The Construction Services to be provided by Contractor pursuant to Section 2.4, in accordance with the terms and provisions of the Contract Documents.

F. Construction Team: The working team established pursuant to Section 2.1.B.

G. Contract Sum: The total compensation to be paid to the Contractor for Construction Services rendered pursuant to the Contract Documents, as set forth in Contractor's Bid (or Guaranteed Maximum Price Addendum), unless adjusted in accordance with the terms of the Contract Documents

H. Contract Time: The time period during which all Construction Services are to be completed pursuant to the Contract Documents, to be set forth in the Project Schedule.

I. Contractor's Personnel: The Contractor's key personnel designated by Contractor.

J. Days: Calendar days except when specified differently. When time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or legal holiday, such day will be omitted from the computation.

K. Defective: When modifying the term "Work", referring to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or that does

not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or that has been damaged prior to Owner's approval of final payment (unless responsibility for the protection thereof has been assumed by Owner).

L. Field Directive: A written order issued by Owner which orders minor changes in the Work not involving a change in Contract Time, to be paid from the Owner's contingency funds.

M. Final Completion Date: The date upon which the Project is fully constructed and all Work required on the Project and Project Site is fully performed as verified in writing by the Owner.

N. Float Time: The time available in the Project Schedule during which an unexpected activity can be completed without delaying Substantial Completion of the Work.

O. Force Majeure: Those conditions constituting excuse from performance as described in and subject to the conditions described in Article XII.

P. Notice to Proceed: Written notice by Owner (after execution of Contract) to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work.

Q. Owner: Manatee County, a political subdivision of the State of Florida.

R. Owner's Project Representative: The individual designated by Owner to perform those functions set forth in Section 7.8.

S. Payment and Performance Bond: The Payment and Performance Bond security posted pursuant to Section 2.4.Y to guarantee payment and performance by the Contractor of its obligations hereunder.

T. Permitting Authority: Any applicable governmental authority acting in its governmental and regulatory capacity which is required to issue or grant any permit, certificate, license or other approval which is required as a condition precedent to the commencement or approved of the Work, or any part thereof, including the building permit.

U. Procurement Ordinance: The Manatee County Procurement Code, Chapter 2-26 of the Manatee County Code of Laws, as amended from time to time.

V. Progress Report: A report to Owner that includes all information required pursuant to the Contract Documents and submitted in accordance with Section 2.4.EE, hereof.

W. Project: The total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by Owner and by separate contractors. For the purposes of the Contract Documents, the term Project shall include all areas of proposed improvements and all areas which may reasonably be judged to have an impact on the Project.

X. Project Costs: The costs incurred by the Contractor to plan, construct and equip the Project and included within, and paid as a component of, the Contract Sum.

Y. Project Manager: Subject to the prior written consent of Owner, the individual designated to receive notices on behalf of the Contractor, or such other individual designated by the Contractor, from time to time, pursuant to written notice in accordance with the Contract Documents.

Z. Project Plans and Specifications: The one hundred percent (100%) construction drawings and specifications prepared by the Architect/Engineer, and any changes, supplements, amendments or additions thereto approved by the Owner, which shall also include any construction drawings and final specifications required for the repair or construction of the Project, as provided herein.

AA. Project Schedule: The schedule and sequence of events for the commencement, progression and completion of the Project, developed pursuant to Section 2.3., as such schedule may be amended as provided herein.

BB. Project Site: The site depicted in the Project Plans and Specifications, inclusive of all rights of way, temporary construction easements or licensed or leased sovereign lands.

CC. Subcontractor: Any individual (other than a direct employee of the Contractor) or organization retained by Contractor to plan, construct or equip the Project pursuant to Article IV.

DD. Substantial Completion and Substantially Complete: The stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy or completion and other permits, approvals, licenses, and other documents from any governmental authority which are necessary for the beneficial occupancy of the Project or any designated portion thereof.

EE. Substantial Completion Date: The date on which the Project or designated portion thereof is deemed to be Substantially Complete, as evidenced by receipt of (i) the Architect/Engineer's certificate of Substantial Completion, (ii) written Acceptance of the Project by the Owner, and (iii) approvals of any other authority as may be necessary or otherwise required.

FF. Substitute: Materials or equipment offered by the Contractor as an alternative to that set forth in the Project Plans and Specifications, where (i) the Project Plans and Specifications do not authorize an "approved equal", or (ii) the Owner, in its reasonable discretion, determines that a pre-authorized "approved equal" will result in a substantial change to the Work because of cost, quality or other difference in comparison to the materials or equipment specified.

GG. Unit Price Work: Work to be paid for on the basis of unit prices.

HH. Work: The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor,

materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

II. Work Directive Change: A written directive to Contractor, issued on or after the effective date of the Agreement pursuant to Section 5.8 and signed by Owner's Project Representative, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed or responding to emergencies.

ARTICLE II

RELATIONSHIP AND RESPONSIBILITIES

2.1 Relationship between Contractor and Owner. The Contractor accepts the relationship of trust and confidence established with Owner pursuant to the Contract Documents. The Contractor shall furnish its best skill and judgment and cooperate with Owner and Owner's Project Representative in furthering the interests of the Owner. The Contractor agrees to provide the professional services required to complete the Project consistent with the Owner's direction and the terms of the Contract Documents. All services provided hereunder by Contractor, either directly or through Subcontractors, shall be provided in accordance with sound construction practices and applicable professional construction standards.

A. Purpose. The purpose of the Contract Documents is to provide for the provision of construction services for the Project on the Project Site by the Contractor, and construction of the Project by the Contractor in accordance with the Project Plans and Specifications. The further purpose of the Contract Documents is to define and delineate the responsibilities and obligations of the parties to the Contract Documents and to express the desire of all such parties to cooperate to accomplish the purposes and expectations of the Contract Documents.

B. Construction Team. The Contractor, Owner and Architect/Engineer shall be called the "Construction Team" and shall work together as a team commencing upon full execution of the Contract Documents through Substantial Completion. As provided in Section 2.2, the Contractor and Architect/Engineer shall work jointly through completion and shall be available thereafter should additional services be required. The Contractor shall provide leadership to the Construction Team on all matters relating to construction. The Contractor understands, acknowledges and agrees that the Architect/Engineer shall provide leadership to the Construction Team on all matters relating to design.

C. Owner's Reliance on Bid (or Guaranteed Maximum Price Addendum). The Contractor acknowledges that the representations, statements, information and pricing contained in its Bid (or Guaranteed Maximum Price Addendum) have been relied upon by the Owner and have resulted in the award of this Project to the Contractor.

2.2 General Contractor Responsibilities. In addition to the other responsibilities set forth herein, the Contractor shall have the following responsibilities pursuant to the Contract Documents:

A. Personnel. The Contractor represents that it has secured, or shall secure, all personnel necessary to perform the Work, none of whom shall be employees of the Owner. Primary liaison between the Contractor and the Owner shall be through the Owner's Project Representative and Contractor's Project Manager. All of the services required herein shall be performed by the Contractor or under the Contractor's supervision, and all personnel engaged in the Work shall be fully qualified and shall be authorized or permitted under law to perform such services.

B. Cooperation with Architect/Engineer. The Contractor's services shall be provided in conjunction with the services of the Architect/Engineer. In the performance of professional services, the Contractor acknowledges that time is critical for Project delivery. The Contractor acknowledges that timely construction utilizing the services of an Architect/Engineer and a Contractor requires maximum cooperation between all parties.

C. Timely Performance. The Contractor shall perform all services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work, in accordance with the Project Schedule. Verification of estimated Project Schedule goals will be made as requested by the Owner.

D. Duty to Defend Work. In the event of any dispute between the Owner and any Permitting Authority that relates to the quality, completeness or professional workmanship of the Contractor's services or Work, the Contractor shall, at its sole cost and expense, cooperate with the Owner to defend the quality and workmanship of the Contractor's services and Work.

E. Trade and Industry Terminology. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials, or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids (or at the time of execution of the Guaranteed Maximum Price Addendum), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Owner or Contractor, or any of their agents or employees from those set forth in the Contract Documents. Computed dimensions shall govern over scaled dimensions.

2.3 Project Schedule. The Contractor, within ten (10) days after being awarded the Agreement, shall prepare and submit for the Owner's and Architect/Engineer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of Work.

- A. The Project Schedule shall show a breakdown of all tasks to be performed, and their relationship in achieving the completion of each phase of Work, subject to review of Owner and Architect/Engineer and approval or rejection by Owner. The Project Schedule shall show, at a minimum, the approximate dates on which each segment of the Work is expected to be started and finished, the proposed traffic flows during each month, the anticipated earnings by the Contractor for each month and the approximate number of crews and equipment to be used. The Project Schedule shall include all phases of procurement, approval of shop drawings, proposed Change Orders in progress, schedules for Change Orders, and performance testing requirements. The Project Schedule shall include a construction commencement date and Project Substantial Completion Date, which dates shall accommodate known or reasonably anticipated geographic, atmospheric and weather conditions.
- B. The Project Schedule shall serve as the framework for the subsequent development of all detailed schedules. The Project Schedule shall be used to verify Contractor performance and to allow the Owner's Project Representative to monitor the Contractor's efforts.
- C. The Project Schedule may be adjusted by the Contractor pursuant to Article V. The Owner shall have the right to reschedule Work provided such rescheduling is in accord with the remainder of terms of the Contract Documents.
- D. The Contractor shall prepare a submittal schedule, promptly after being awarded the Agreement and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect/Engineer's approval. The Architect/Engineer's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect/Engineer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.
- E. The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect/Engineer.

2.4 Construction Services. The Contractor shall provide the following Construction Services:

A. Construction of Project. The Contractor shall work from the receipt of a Notice to Proceed through the Substantial Completion of the Project in accordance with the terms of the Contract Documents to manage the construction of the Project. The Construction Services provided by the Contractor to construct the Project shall include without limitation (1) all services necessary and commensurate with established construction standards, and (2) all services described in the Invitation for Bid (or Request for Proposal) and the Bid (or Guaranteed Maximum Price Addendum).

B. Notice to Proceed. A Notice to Proceed may be given at any time within thirty (30) days after the effective date of the Agreement. Contractor shall start to perform the Work on the date specified in the Notice to Proceed, but no Work shall be done at the site prior to the issuance of the Notice to Proceed.

C. Quality of Work. If at any time the labor used or to be used appears to the Owner as insufficient or improper for securing the quality of Work required or the required rate of progress, the Owner may order the Contractor to increase its efficiency or to improve the character of its Work, and the Contractor shall conform to such an order. Any such order shall not entitle Contractor to any additional compensation or any increase in Contract Time. The failure of the Owner to demand any increase of such efficiency or any improvement shall not release the Contractor from its obligation to secure the quality of Work or the rate of progress necessary to complete the Work within the limits imposed by the Contract Documents. The Owner may require the Contractor to remove such personnel as the Owner deems incompetent, careless, insubordinate or otherwise objectionable, or whose continued employment on the Project is deemed to be contrary to the Owner's interest. The Contractor shall provide good quality workmanship and shall promptly correct construction defects without additional compensation. Acceptance of the Work by the Owner shall not relieve the Contractor of the responsibility for subsequent correction of any construction defects.

D. Materials. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by Architect/Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instruction of the applicable supplier except as otherwise provided in the Contract Documents.

E. Accountability for Work. The Contractor shall be solely accountable for its Work, including plans review and complete submittals. The Contractor shall be solely responsible for means, methods, techniques, sequences and procedures of construction. If a specific means, method, technique, sequence or procedure of construction is required by the Contract Documents, the Contractor may utilize an alternative means, method, technique, sequence or procedure acceptable to the Architect/Engineer if the Contractor submits sufficient information to allow the Architect/Engineer to determine that the alternative is equivalent to that required by the Contract Documents.

F. Contract Sum. The Contractor shall construct the Project so that the Project can be built for a cost not to exceed the Contract Sum.

G. Governing Specifications. In the absence of specified Owner design standards or guidelines, the Architect/Engineer shall use, and the Contractor shall comply with, the most recent version of the applicable FDOT or AASHTO design standards. In general, the Project shall be constructed by the Contractor in accordance with applicable industry standards. The Contractor shall be responsible for utilizing and maintaining current knowledge of any laws, ordinances, codes, rules, regulations, standards, guidelines, special conditions, specifications or other mandates relevant to the Project or the services to be performed.

H. Adherence to Project Schedule. The development and equipping of the Project shall be undertaken and completed in accordance with the Project Schedule, and within the Contract Time described therein.

I. Superintendent. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

(1) The Contractor, as soon as practicable after award of the Agreement, shall furnish in writing to the Owner through the Architect/Engineer the name and qualifications of the proposed superintendent. The Architect/Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect/Engineer has reasonable objection to the proposed superintendent or (2) that the Architect/Engineer requires additional time to review. Failure of the Architect/Engineer to reply within 14 days shall constitute notice of no reasonable objection.

(2) The Contractor shall not employ a proposed superintendent to whom the Owner or Architect/Engineer has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not be unreasonably withheld or delayed.

J. Work Hours. Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and Contractor shall not permit overtime work or the performance of Work on a Saturday, Sunday or legal holiday without Owner's written consent given after prior notice to Architect/Engineer (at least seventy-two (72) hours in advance).

K. Overtime-Related Costs. Contractor shall pay for all additional Architect/Engineer charges, inspection costs and Owner staff time for any overtime work which may be authorized. Such additional charges shall be an obligation of Contractor and no extra payment shall be made by Owner because such overtime work. At Owner's option, such overtime costs may be deducted from Contractor's monthly payment request or Contractor's retainage prior to release of final payment. Contractor's obligation to pay all overtime-related costs shall not apply if Contractor is directed by Owner to work overtime solely for Owner's convenience.

L. Insurance, Overhead and Utilities. Unless otherwise specified, Contractor shall furnish and assume full responsibility for all bonds, insurance, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

M. Cleanliness. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project Site.

Contractor shall restore to original conditions all property not designated for alteration by the Contract Documents. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from Contractor.

N. Loading. Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

O. Safety and Protection. Contractor shall comply with all applicable federal, state and local safety regulations. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury or loss to:

- (1) All employees on the Work and other persons and organizations who may be affected thereby;
- (2) All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site; and
- (3) Other property at the Project Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement during construction.

Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss, and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for the protection required by public authority or local conditions. Contractor shall provide reasonable maintenance of traffic for the public and preservation of the Owner's business, taking into full consideration all local conditions. Contractor's duties and responsibilities for safety and protection with regard to the Work shall continue until such time as all the Work is completed.

P. Emergencies. In emergencies affecting the safety or protection of persons or the Work or property at the Project Site or adjacent thereto, Contractor, without special instruction or authorization from Architect/Engineer or Owner, shall act to prevent threatened damage, injury or loss. Contractor shall give Owner prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Owner determines that a change in the Project is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variation.

Q. Substitutes. For Substitutes not included with the Bid (or Guaranteed Maximum Price Addendum), but submitted after the effective date of the Agreement (or Guaranteed Maximum Price Addendum), Contractor shall make written application to Architect/Engineer for acceptance thereof, certifying that the proposed Substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application

will also contain an itemized estimate of all costs and delays or schedule impacts that will result directly or indirectly from review, acceptance and provision of such Substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by the Architect/Engineer in evaluating the proposed Substitute. Architect/Engineer may require Contractor to furnish at Contractor's expense, additional data about the proposed Substitute. In rendering a decision, Owner, Architect/Engineer and Contractor shall have access to any available Float Time in the Project Schedule. If Substitute materials or equipment not included as part of the Bid (or Guaranteed Maximum Price Addendum), but proposed after the effective date of the Agreement, are accepted and are less costly than the originally specified materials or equipment, then the net difference in cost shall be credited to the Owner and an appropriate Change Order executed to adjust the Contract Sum.

- (1) Architect/Engineer will be allowed a reasonable time within which to evaluate each proposed Substitute. Architect/Engineer will be the sole judge of acceptability and no Substitute will be ordered, installed or utilized without Architect/Engineer's prior written acceptance which will be evidenced by either a Change Order or an approved shop drawing. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any Substitute.
- (2) Contractor shall reimburse Owner for the charges of Architect/Engineer and Architect/Engineer's Consultants for evaluating each proposed Substitute submitted after the effective date of the Agreement and all costs resulting from any delays in the Work while the Substitute was undergoing review.

R. Surveys and Stakes. The Contractor shall furnish, as part of the Contract Sum, all labor, stakes, surveys, batter boards for structures, grade lines and other materials and supplies and shall set construction stakes and batter boards for establishing lines, position of structures, slopes and other controlling points necessary for the proper prosecution of the Work. Where rights-of-way, easements, property lines or any other conditions which make the lay-out of the Project or parts of the Project critical are involved, the Contractor shall employ a competent surveyor who is registered in the State of Florida for lay-out and staking. These stakes and marks shall constitute the field control by and in accord with which the Contractor shall govern and execute the Work. The Contractor shall be held responsible for the preservation of all stakes and marks and if for any reason any of the stakes or marks or batter boards become destroyed or disturbed, they shall be immediately and accurately replaced by the Contractor.

S. Suitability of Project Site. The Contractor has, by careful examination, satisfied itself as to the nature and location of the Work and all other matters which can in any way affect the Work, including, but not limited to details pertaining to borings, as shown on the drawings. Such boring information is not guaranteed to be more than a general indication of the materials likely to be found adjacent to holes bored at the Project Site, approximately at the locations indicated. The Contractor has examined boring data, where available, made its own interpretation of the subsurface conditions and other preliminary data, and has based its Bid (or Guaranteed Maximum Price Addendum) on its own opinion of the conditions likely to be encountered. Except as specifically provided in Sections 2.4.U., 5.4 and 5.5, no extra compensation or extension of time will be considered for any Project Site conditions that existed at the time of bidding (or at the time of execution of the Guaranteed Maximum Price Addendum). No verbal agreement or conversation with any officer, agent or employee of the Owner, before or

after the execution of the Agreement, shall affect or modify any of the terms or obligations herein contained.

T. Project Specification Errors. If the Contractor, during the Work, finds that the drawings, specifications or other Contract Documents cannot be followed, the Contractor shall immediately inform the Owner in writing, and the Owner shall promptly check the accuracy of the information. Any Work done after such discovery, until any necessary changes are authorized, will be done at the Contractor's sole risk of non-payment and delay.

U. Remediation of Contamination. Owner and Contractor recognize that remediation of subsurface conditions may be necessary due to potential hazardous materials contamination. Because the presence or extent of any contamination is not known, Contractor shall include no cost in the Contract Sum, and no time in the Project Schedule, for cost or delays that might result from any necessary remediation. The Project Schedule will provide a period of time between demolition activities and the start of the next activity to commence any remediation if needed. Contractor shall use all reasonable efforts in scheduling the Project to minimize the likelihood that remediation delays construction. Any hazardous materials remediation Work which Contractor agrees to perform shall be done pursuant to a Change Order or amendment consistent with the following:

- (1) The dates of Substantial Completion shall be equitably adjusted based on delays, if any, incurred in connection with remediation efforts.
- (2) Contractor, and any Subcontractors which have mobilized on the Project Site, shall be paid for demonstrated costs of overhead operations at the Project Site during any period of delay of more than seven (7) days, except to the extent that Work proceeds concurrently with remediation. The categories of costs to be reimbursed are limited to those reasonably incurred at the jobsite during the delay period (such as trailers or offices, telephones, faxes, and the like); equipment dedicated to the Project and located at the Project Site; salaries and associated costs of personnel dedicated to the Project to the extent that they do not perform work on other projects; and other jobsite costs that are reasonable and which are incurred during the delay period. Subcontractors and suppliers which have not mobilized are limited to the costs set forth in Section 2.4.U(3).
- (3) Contractor and any Subcontractor or supplier on the Project who is eligible for compensation shall be paid any demonstrated costs of escalation in materials or labor, and reasonable costs of off-site storage of materials identified to the Project, arising because of any delay of more than seven (7) days. Such Contractor, Subcontractors and suppliers are obligated to take all reasonable steps to mitigate escalation costs, such as through early purchase of materials.
- (4) Contractor, for itself and all Subcontractors and suppliers on the Project, hereby agrees that the extension of time for delays under Section 2.4.U(1), and payment of the costs identified in Sections 2.4.U(2) and/or Section 2.4.U(3), are the sole remedies for costs and delays described in this Section, and waives all claims and demands for extended home office

overhead (including, but not limited to, "Eichleay" claims), lost profit or lost opportunities, and any special, indirect, or consequential damages arising as a result of delays described in this Section. The Contract Sum shall be adjusted to reflect payment of allowable costs.

- (5) If any delay described in this section causes the time or cost for the Project to exceed the Contract Time or the Contract Sum, then the Owner may terminate the Agreement pursuant to Section 14.2.
- (6) Contractor and any Subcontractor or supplier seeking additional costs under this Section 2.4.U. shall promptly submit estimates or any costs as requested by Owner, and detailed back-up for all costs when payment is sought or whenever reasonably requested by Owner. All costs are auditable, at Owner's discretion. Bid, estimate and pricing information reasonably related to any request for additional compensation will be provided promptly upon request.
- (7) Contractor shall include provisions in its subcontracts and purchase orders consistent with this Section.

V. Interfacing.

- (1) The Contractor shall take such measures as are necessary to ensure proper construction and delivery of the Project, including but not limited to providing that all procurement of long-lead items, the separate construction Subcontractors, and the general conditions items are performed without duplication or overlap to maintain completion of all Work on schedule. Particular attention shall be given to provide that each Subcontractor bid package clearly identifies the Work included in that particular separate subcontract, its scheduling for start and completion, and its relationship to other separate contractors.
- (2) Without assuming any design responsibilities of the Architect/Engineer, the Contractor shall include in the Progress Reports required under this Section 2.4 comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Architect/Engineer may arrange for necessary corrections.

W. Job Site Facilities. The Contractor shall arrange for all job site facilities required and necessary to enable the Contractor and Architect/Engineer to perform their respective duties and to accommodate any representatives of the Owner which the Owner may choose to have present on the Project Site.

X. Weather Protection. The Contractor shall provide temporary enclosures of building areas to assure orderly progress of the Work during periods when extreme weather conditions are likely to be experienced. The Contractor shall also be responsible for providing weather protection for Work in progress and for materials stored on the Project Site. A contingency plan shall be prepared upon request of the Owner for weather conditions that may affect the construction.

Y. Payment and Performance Bond. Prior to the construction commencement date, the Contractor shall obtain, for the benefit of and directed to the Owner, a Payment and Performance Bond satisfying the requirements of Section 255.05, Florida Statutes, covering the faithful performance by the Contractor of its obligations under the Contract Documents, including but not limited to the construction of the Project on the Project Site and the payment of all obligations arising thereunder, including all payments to Subcontractors, laborers, and materialmen. The surety selected by the Contractor to provide the Payment and Performance Bond shall be approved by the Owner prior to the issuance of such Bond, which approval shall not be unreasonably withheld or delayed provided that the surety is rated A or better by Best's Key Guide, latest edition. For Changes in the Work that result in an increase in the Contract Sum, Owner reserves the right to require the Contractor to secure and deliver additive riders to the Payment and Performance Bond.

Z. Construction Phase; Building Permit; Code Inspections. Unless otherwise provided, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

- (1) Building Permit. The Owner and Architect/Engineer shall provide such information to any Permitting Authority as is necessary to obtain approval from the Permitting Authority to commence construction prior to beginning construction. The Contractor shall pull any required building permit, and shall be responsible for delivering and posting the building permit at the Project Site prior to the commencement of construction. The cost of the building permit is included in the Contract Sum. The Owner and Architect/Engineer shall fully cooperate with the Contractor when and where necessary.
- (2) Code Inspections. The Project requires detailed code compliance inspection during construction in disciplines determined by any Permitting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing, general building and fire. The Contractor shall notify the appropriate inspector(s) and the Architect/Engineer, no less than 24 hours in advance, when the Work is ready for inspection and before the Work is covered up. All inspections shall be made for conformance with the applicable ordinances and building codes. Costs for all re-inspections of Work found defective and subsequently repaired shall not be included as Project Costs and shall be borne by the Contractor or as provided in the contract between Contractor and Subcontractor.
- (3) Contractor's Personnel. The Contractor shall maintain sufficient off-site support staff and competent full-time staff at the Project Site authorized to act on behalf of the Contractor to coordinate, inspect, and provide general direction of the Work and progress of the Subcontractors. At all times during the performance of the Work, the Owner shall have the right to demand replacement of Contractor Personnel to whom the Owner has reasonable objection, without liability to the Contractor.

- (4) Lines of Authority. To provide general direction of the Work, the Contractor shall establish and maintain lines of authority for its personnel and shall provide this information to the Owner and all other affected parties, such as the code inspectors of any Permitting Authority, the Subcontractors, and the Architect/Engineer. The Owner and Architect/Engineer may attend meetings between the Contractor and his Subcontractors; however, such attendance is optional and shall not diminish either the authority or responsibility of the Contractor to administer the subcontracts.

AA. Quality Control. The Contractor shall develop and maintain a program, acceptable to the Owner and Architect/Engineer, to assure quality control of the construction. The Contractor shall be responsible for and supervise the Work of all Subcontractors, providing instructions to each when their Work does not conform to the requirements of the Project Plans and Specifications, and the Contractor shall continue to coordinate the Work of each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should a disagreement occur between the Contractor and the Architect/Engineer over the acceptability of the Work, the Owner, at its sole discretion and in addition to any other remedies provided herein, shall have the right to determine the acceptability, provided that such determination is consistent with standards for construction projects of this type and generally accepted industry standards for workmanship in the State of Florida.

BB. Management of Subcontractors. All Subcontractors shall be compensated in accordance with Article IV. The Contractor shall solely control the Subcontractors. The Contractor shall negotiate all Change Orders and Field Orders with all affected Subcontractors and shall review the costs and advise the Owner and Architect/Engineer of their validity and reasonableness, acting in the Owner's best interest. When there is an imminent threat to health and safety, and Owner's Project Representative concurrence is impractical, the Contractor shall act immediately to remove the threats to health and safety and shall subsequently fully inform Owner of all such action taken. The Contractor shall also carefully review all shop drawings and then forward the same to the Architect/Engineer for review and actions. The Architect/Engineer will transmit them back to the Contractor, who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The Contractor shall maintain a suspense control system to promote expeditious handling. The Contractor shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of him by the Subcontractors and shall maintain a business system to promote timely response. The Contractor shall inform the Architect/Engineer which shop drawings or requests for clarification have the greatest urgency, to enable the Architect/Engineer to prioritize requests coming from the Contractor. The Contractor shall advise the Owner and Architect/Engineer when timely response is not occurring on any of the above.

CC. Job Requirements.

- (1) The Contractor shall provide each of the following as a part of its services hereunder:
- (a) Maintain a log of daily activities, including manpower records, equipment on site, weather, delays, major decisions, etc;

- (b) Maintain a roster of companies on the Project with names and telephone numbers of key personnel;
- (c) Establish and enforce job rules governing parking, clean-up, use of facilities, and worker discipline;
- (d) Provide labor relations management and equal opportunity employment for a harmonious, productive Project;
- (e) Provide and administer a safety program for the Project and monitor for subcontractor compliance without relieving them of responsibilities to perform Work in accordance with best acceptable practice;
- (f) Provide a quality control program as provided under Section 2.4.C above;
- (g) Provide miscellaneous office supplies that support the construction efforts which are consumed by its own forces;
- (h) Provide for travel to and from its home office to the Project Site and to those other places within Manatee County as required by the Project;
- (i) Verify that tests, equipment, and system start-ups and operating and maintenance instructions are conducted as required and in the presence of the required personnel and provide adequate records of same to the Architect/Engineer;
- (j) Maintain at the job site orderly files for correspondence, reports of job conferences, shop drawings and sample submissions, reproductions of original Contract Documents including all addenda, change orders, field orders, additional drawings issued after execution of the Agreement, Owner/Architect/Engineer's clarifications and interpretations of the Contract Documents, Progress Reports, as-built drawings, and other project related documents;
- (k) Keep a diary or log book, recording hours on the job site, weather conditions, data relative to questions of extras or deductions; list of visiting officials and representatives or manufacturers, fabricators, suppliers and distributors; daily activities, decisions, observations in general and specific observations in more detail as in the case of observing test procedures, and provide copies of same to Owner/Architect/Engineer;
- (l) Record names, addresses and telephone numbers of all Contractors, Subcontractors and major suppliers of materials and equipment;

- (m) Furnish Owner/Architect/Engineer periodic reports, as required, of progress of the Work and Contractor's compliance with the approved progress schedule and schedule of shop drawing submissions;
 - (n) Consult with Owner/Architect/Engineer in advance of scheduling major tests, inspections or start of important phases of the Work;
 - (o) Verify, during the course of the Work, that certificates, maintenance and operations manuals and other data required to be assembled and furnished are applicable to the items actually installed, and deliver same to Owner/Architect/Engineer for review prior to final Acceptance of the Work; and
 - (p) Cooperate with Owner in the administration of grants.
- (2) The Contractor shall provide personnel and equipment, or shall arrange for separate Subcontractors to provide each of the following as a Project Cost:
- (a) Services of independent testing laboratories, and provide the necessary testing of materials to ensure conformance to contract requirements; and
 - (b) Printing and distribution of all required bidding documents and shop drawings, including the sets required by Permitting Authority inspectors.

DD. As-Built Drawings. The Contractor shall continuously review as-built drawings and mark up progress prints to provide as much accuracy as possible. Prior to, and as a requirement for authorizing final payment to the Contractor due hereunder, the Contractor shall provide to the Owner an original set of marked-up, as-built Project Plans and Specifications and an electronic format of those records showing the location and dimensions of the Project as constructed, which documents shall be certified as being correct by the Contractor and the Architect/Engineer. Final as-built drawings shall be signed and sealed by a registered Florida surveyor.

EE. Progress Reports. The Contractor shall forward to the Owner, as soon as practicable after the first day of each month, a summary report of the progress of the various parts of the Work, to include those parts of the Work in fabrication and in the field, stating the existing status, estimated time of completion and cause of delay, if any. Together with the summary report, the Contractor shall submit any necessary revisions to the original schedule for the Owner's review and approval. In addition, more detailed schedules may be required by the Owner for daily traffic control.

FF. Contractor's Warranty. The Contractor warrants to the Owner and Architect/Engineer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and

will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

- (1) Contractor shall use its best efforts and due diligence to ensure that during the warranty period, those entities or individuals who have provided direct warranties to the Owner as required by the Contract Documents perform all required warranty Work in a timely manner and at the sole cost and expense of such warranty providers. Any such cost or expense not paid by the warranty providers shall be paid by the Contractor, to include any costs and attorney's fees incurred in warranty-related litigation between Contractor and any Subcontractors.
- (2) The Contractor shall secure guarantees and warranties of Subcontractors, equipment suppliers and materialmen, and assemble and deliver same to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation. The Contractor shall collect and deliver to the Owner any specific written guaranties or warranties given by others as required by subcontracts.
- (3) At the Owner's request, the Contractor shall conduct, jointly with the Owner and the Architect/Engineer, no more than two (2) warranty inspections within three (3) years after the Substantial Completion Date.

GG. Apprentices. If Contractor employs apprentices, their performance of Work shall be governed by and shall comply with the provisions of Chapter 446, Florida Statutes.

HH. Schedule of Values. Unit prices shall be established for this Agreement by the submission of a schedule of values within ten (10) days of receipt of the Notice to Proceed. The schedule shall include quantities and prices of items equaling the Contract Sum and will subdivide the Work into components in sufficient detail to serve as the basis for progress payments during construction. Such prices shall include an appropriate amount of overhead and profit applicable to each item of Work. Upon request of the County, the Contractor shall support the values with data which will substantiate their correctness.

II. Other Contracts. The Owner reserves the right to let other contracts in connection with this Work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and execution of their work, and promptly connect and coordinate the Work with theirs.

ARTICLE III

COMPENSATION

3.1 Compensation. The Contract Sum constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at Contractor's expense without change in the Contract Sum.

A. Adjustments. The Contract Sum may only be changed by Change Order or by a written amendment. Any claim for an increase or decrease in the Contract Sum shall be based on written notice delivered by the party making the claim to the other party. Notice of the amount of the claim with supporting data shall be delivered within fifteen (15) days from the beginning of such occurrence and shall be accompanied by claimant's written statement that the amount claimed covers all amounts to which the claimant is entitled as a result of the occurrence of said event. Failure to deliver a claim within the requisite 15-day period shall constitute a waiver of the right to pursue said claim.

B. Valuation. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Sum shall be determined in one of the following ways (at Owner's discretion):

- (1) In the case of Unit Price Work, in accordance with Section 3.1.C, below; or
- (2) By mutual acceptance of a lump sum; or
- (3) On the basis of the cost of the Work, plus a negotiated Contractor's fee for overhead and profit. Contractor shall submit an itemized cost breakdown together with supporting data.

C. Unit Price Work. The unit price of an item of Unit Price Work shall be subject to re-evaluation and adjustment pursuant to a requested Change Order under the following conditions:

- (1) If the total cost of a particular item of Unit Price Work amounts to 5% or more of the Contract Sum and the variation in the quantity of the particular item of Unit Price Work performed by Contractor differs by more than 15% from the estimated quantity of such item indicated in the Agreement; and
- (2) If there is no corresponding adjustment with respect to any other item of Work; and
 - (i) If Contractor believes that it has incurred additional expense as a result thereof; or
 - (ii) If Owner believes that the quantity variation entitles it to an adjustment in the unit price; or
 - (iii) If the parties are unable to agree as to the effect of any such

variations in the quantity of Unit Price Work performed.

3.2 Schedule of Compensation. All payments for services and material under the Contract Documents shall be made in accordance with the following provisions.

A. Periodic Payments for Services. The Contractor shall be entitled to receive payment for Construction Services rendered pursuant to Section 2.4 in periodic payments which shall reflect a fair apportionment of cost and schedule of values of services furnished prior to payment, subject to the provisions of this Section.

B. Payment for Materials and Equipment. In addition to the periodic payments authorized hereunder, payments may be made for material and equipment not incorporated in the Work but delivered and suitably stored at the Project Site, or another location, subject to prior approval and acceptance by the Owner on each occasion.

C. Credit toward Contract Sum. All payments for Construction Services made hereunder shall be credited toward the payment of the Contract Sum as Contractor's sole compensation for the construction of the Project.

3.3 Invoice and Payment. All payments for services and materials under the Contract Documents shall be invoiced and paid in accordance with the following provisions.

A. Invoices. The Contractor shall submit to the Owner periodic invoices for payment, in a form acceptable to the Owner, which shall include a sworn statement certifying that, to the best of the Contractor's knowledge, information and belief, the construction has progressed to the point indicated, the quality and the Work covered by the invoice is in accord with the Project Plans and Specifications, and the Contractor is entitled to payment in the amount requested, along with the cost reports required pursuant to Article II, showing in detail all monies paid out, Project Costs accumulated, or Project Cost incurred during the previous period. This data shall be attached to the invoice.

B. Additional Information; Processing of Invoices. Should an invoiced amount appear to exceed the Work effort believed to be completed, the Owner may, prior to processing of the invoice for payment, require the Contractor to submit satisfactory evidence to support the invoice. All Progress Reports and invoices shall be delivered to the attention of the Owner's Project Representative. Invoices not properly prepared (mathematical errors, billing not reflecting actual Work done, no signature, etc.) shall be returned to the Contractor for correction.

C. Architect/Engineer's Approval. Payment for Work completed shall be subject to the Architect/Engineer approving the payment requested by the Contractor and certifying the amount thereof that has been properly incurred and is then due and payable to the Contractor, and identifying with specificity any amount that has not been properly incurred and that should not be paid.

D. Warrants of Contractor with Respect to Payments. The Contractor warrants that (1) upon payment of any retainage, materials and equipment covered by a partial payment request will pass to Owner either by incorporation in construction or upon receipt of payment by the Contractor, whichever occurs first; (2) Work, materials and equipment covered by previous

partial payment requests shall be free and clear of liens, claims, security interests, or encumbrances; and (3) no Work, materials or equipment covered by a partial payment request which has been acquired by the Contractor or any other person performing Work at the Project Site, or furnishing materials or equipment for the Project, shall be subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or any other person.

E. All Compensation Included. Contractor's compensation includes full payment for services set forth in the Contract Documents, including but not limited to overhead, profit, salaries or other compensation of Contractor's officers, partners and/or employees, general operating expenses incurred by Contractor and relating to this Project, including the cost of management, supervision and data processing staff, job office equipment and supplies, and other similar items.

ARTICLE IV

SUBCONTRACTORS

4.1 Subcontracts. At the Owner's request, the Contractor shall provide Owner's Project Representative with copies of all proposed and final subcontracts, including the general and supplementary conditions thereof.

A. Subcontracts Generally. All subcontracts shall: (1) require each Subcontractor to be bound to Contractor to the same extent Contractor is bound to Owner 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 Contractor to Owner at the election of Owner, upon termination of Contractor, (3) provide that Owner will be an additional indemnified party of the subcontract, (4) provide that Owner will be an additional insured on all insurance policies required to be provided by the Subcontractor, except workers' compensation, (5) assign all warranties directly to Owner, and (6) identify Owner as an intended third-party beneficiary of the subcontract.

(1) A Subcontractor is a person or entity who has a direct contract with Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(2) A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

B. No Damages for Delay. Except when otherwise expressly agreed to by Owner 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 Owner or Architect/Engineer or attributable to the Owner 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 Contractor within the time and in the manner in which the Contractor must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

C. Subcontractual Relations. The Contractor shall require each Subcontractor to assume all the obligations and responsibilities which the Contractor owes the Owner pursuant to the Contract Documents, by the parties to the extent of the Work to be performed by the Subcontractor. Said obligations shall be made in writing and shall preserve and protect the rights of the Owner and Architect/Engineer, with respect to the Work to be performed by the Subcontractor, so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with its sub-subcontractors.

D. Insurance; Acts and Omissions. Insurance requirements for Subcontractors shall be no more stringent than those requirements imposed on the Contractor by the Owner. The Contractor shall be responsible to the Owner for the acts and omissions of its employees, agents, Subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to the Contractor.

4.2 Relationship and Responsibilities. Except as specifically set forth herein with respect to direct materials acquisitions by Owner, nothing contained in the Contract Documents or in any Contract Document does or shall create any contractual relation between the Owner or Architect/Engineer and any Subcontractor. Specifically, the Contractor is not acting as an agent of the Owner with respect to any Subcontractor. The utilization of any Subcontractor shall not relieve Contractor from any liability or responsibility to Owner, or obligate Owner to the payment of any compensation to the Subcontractor or additional compensation to the Contractor.

4.3 Payments to Subcontractors; Monthly Statements. The Contractor shall be responsible for paying all Subcontractors from the payments made by the Owner to Contractor pursuant to Article III, subject to the following provisions:

A. Payment. The Contractor shall, no later than ten (10) days after receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, pay to each Subcontractor the amount to which the Subcontractor is entitled in accordance with the terms of the Contractor's contract with such Subcontractor. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-Subcontractors in a similar manner. After receipt of payment from Owner, if the need should arise to withhold payments to Subcontractors for any reason, as solely determined by Contractor, the Contractor shall promptly restore such monies to the Owner, adjusting subsequent pay requests and Project bookkeeping as required.

B. Final Payment of Subcontractors. The final payment of retainage to Subcontractors shall not be made until the Project has been inspected by the Architect/Engineer or other person designated by the Owner for that purpose, and until both the Architect/Engineer and the Contractor have issued a written certificate that the Project has been constructed in accordance with the Project Plans and Specifications and approved Change Orders. Before issuance of final payment to any Subcontractor without any retainage, the Subcontractor shall submit satisfactory evidence that all payrolls, material bills, and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted, and instruction for the Owner's operating and maintenance personnel is complete. Final payment may be made to certain select Subcontractors whose Work is satisfactorily completed prior to the completion of the Project, but only upon approval of the Owner's Project Representative.

4.4 Responsibility for Subcontractors. As provided in Section 2.4.BB, Contractor shall be fully responsible to Owner for all acts and omissions of the Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect Contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions.

4.5 Contingent Assignment of Subcontracts. Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that:

- (1) assignment is effective only after termination of the Contract by the Owner for cause pursuant to Article XIV and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- (2) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract. Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Upon such assignment to the Owner, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE V

CHANGES IN WORK

5.1 General. Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order, Work Directive Change or order for a minor change in the Work, subject to the limitations stated in this Article V and elsewhere in the Contract Documents. A Change Order shall be based upon agreement among the

Owner, Contractor and Architect/Engineer; a Work Directive Change requires agreement by the Owner and Architect/Engineer and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect/Engineer alone. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Work Directive Change or order for a minor change in the Work.

5.2 Minor Changes in the Work. The Owner or Architect/Engineer shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such change will be effected by written order signed by the Architect/Engineer and shall be binding on the Owner and Contractor. The Contractor shall abide by and perform such minor changes. Such changes shall be effected by a Field Directive or a Work Directive Change. Documentation of changes shall be determined by the Construction Team, and displayed monthly in the Progress Reports. Because such changes shall not affect the Contract Sum to be paid to the Contractor, they shall not require a Change Order pursuant to Section 5.6.

5.3 Emergencies. In any emergency affecting the safety of persons or property, the Contractor shall act at its discretion to prevent threatened damage, injury, or loss. Any increase in the Contract Sum or extension of time claimed by the Contractor because of emergency Work shall be determined as provided in Section 5.6. However, whenever practicable, the Contractor shall obtain verbal concurrence of the Owner's Project Representative and Architect/Engineer where the act will or may affect the Contract Sum or Contract Time.

5.4 Concealed Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that 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, the Contractor shall promptly provide notice to the Owner and the Architect/Engineer before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect/Engineer will promptly investigate such conditions and, if the Architect/Engineer determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect/Engineer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect/Engineer shall promptly notify the Owner and Contractor in writing, stating the reasons. If the Contractor disputes the Architect/Engineer's determination or recommendation, the Contractor may proceed as provided in Article VIII. If the Owner disputes the Architect/Engineer's determination or recommendation, the Owner may appeal directly to the Purchasing Official and shall thereafter follow the process set forth in Section 8.5.

5.5 Hazardous Materials. In the event the Contractor encounters on the Project Site material reasonably believed to be hazardous, petroleum or petroleum related products, or other hazardous or toxic substances, except as provided in Section 2.4.U, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect/Engineer in writing. The Work in the affected area shall not thereafter be resumed except by Change Order or written amendment, if in fact the material or substance has not been rendered

harmless. The Work in the affected area shall be resumed when the Project Site has been rendered harmless, in accordance with the final determination by the Architect/Engineer or other appropriate professional employed by Owner. The Contractor shall not be required to perform without its consent any Work relating to hazardous materials, petroleum or petroleum related products, or other hazardous or toxic substances. In the event the Contractor encounters on the Project Site materials believed in good faith to be hazardous or contaminated material, and the presence of such hazardous or contaminated material was not known and planned for at the time the Contractor submitted its Bid (or Guaranteed Maximum Price proposal), and it is necessary for the Contractor to stop Work in the area affected and delays Work for more than a seven (7) day period, adjustments to the Contract Sum and/or Contract Time shall be made in accordance with this Article V.

5.6 Change Orders; Adjustments to Contract Sum.

A. Change Orders Generally. The increase or decrease in the Contract Sum resulting from a change authorized pursuant to the Contract Documents shall be determined:

- (1) By mutual acceptance of a lump sum amount properly itemized and supported by sufficient substantiating data, to permit evaluation by the Architect/Engineer and Owner; or
- (2) By unit prices stated in the Agreement or subsequently agreed upon; or
- (3) By any other method mutually agreeable to Owner and Contractor.

If Owner and Contractor are unable to agree upon increases or decreases in the Contract Sum and the Architect/Engineer certifies that the work needs to be commenced prior to any such agreement, the Contractor, provided it receives a written Change Order signed by or on behalf of the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Owner, through the Architect/Engineer, will establish an estimated cost of the Work and the Contractor shall not perform any Work whose cost exceeds that estimated without prior written approval by the Owner. In such case, the Contractor shall keep and present in such form as the Owner may prescribe an itemized accounting, together with appropriate supporting data of the increase in overall costs of the Project. The amount of any decrease in the Contract Sum to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in costs will be the amount of the actual net decrease.

5.7 Owner-Initiated Changes. Without invalidating the Agreement and without notice to any Surety, Owner may, at any time, order additions, deletions or revisions in the Work. These will be authorized by a written amendment, a Field Directive, a Change Order, or a Work Directive Change, as the case may be. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). A Work Directive Change may not change the Contract Sum or the Contract Time; but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Sum or Contract Time.

5.8 Unauthorized Work. Contractor shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents.

5.9 Defective Work. Owner and Contractor shall execute appropriate Change Orders (or written amendments) covering changes in the Work which are ordered by Owner, or which may be required because of acceptance of defective Work, without adjustment to the Contract Sum.

5.10 Estimates for Changes. At any time Architect/Engineer may request a quotation from Contractor for a proposed change in the Work. Within twenty-one (21) calendar days after receipt, Contractor shall submit a written and detailed proposal for an increase or decrease in the Contract Sum or Contract Time for the proposed change. Architect/Engineer shall have twenty-one (21) calendar days after receipt of the detailed proposal to respond in writing. The proposal shall include an itemized estimate of all costs and time for performance that will result directly or indirectly from the proposed change. Unless otherwise directed, itemized estimates shall be in sufficient detail to reasonably permit an analysis by Architect/Engineer of all material, labor, equipment, subcontracts, overhead costs and fees, and shall cover all Work involved in the change, whether such Work was deleted, added, changed or impacted. Notwithstanding the request for quotation, Contractor shall carry on the Work and maintain the progress schedule. Delays in the submittal of the written and detailed proposal will be considered non-prejudicial.

5.11 Form of Proposed Changes. The form of all submittals, notices, Change Orders and other documents permitted or required to be used or transmitted under the Contract Documents shall be determined by the Owner. Standard Owner forms shall be utilized.

5.12 Changes to Contract Time. The Contract Time may only be changed pursuant to a Change Order or a written amendment to the Contract Documents. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered by the party making the claim to the other party. Notice of the extent of the claim with supporting data shall be delivered within fifteen (15) days from detection or beginning of such occurrence and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled to because of the occurrence of said event. The Contract time will be extended in an amount equal to time lost due to delays beyond the control of Contractor. Such delays shall include, but not be limited to, acts or neglect by Owner or others performing additional Work; or to fires, floods, epidemics, abnormal weather conditions or acts of God. Failure to deliver a written notice of claim within the requisite 15-day period shall constitute a waiver of the right to pursue said claim.

ARTICLE VI

ROLE OF ARCHITECT/ENGINEER

6.1 General.

A. Retaining. The Owner shall retain an Architect/Engineer (whether an individual or an entity) lawfully licensed to practice in Florida. That person or entity is identified as the Architect/Engineer in the Agreement and is referred to throughout the Contract Documents as if singular in number.

B. Duties. Duties, responsibilities and limitations of authority of the Architect/Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner and Architect/Engineer. Consent shall not be unreasonably withheld.

C. Termination. If the employment of the Architect/Engineer is terminated, the Owner shall employ a successor Architect/Engineer as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect/Engineer.

6.2 Administration. The Architect/Engineer will provide administration of the Agreement as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect/Engineer approves the final Application for Payment. The Architect/Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

A. Site Visits. The Architect/Engineer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work complete, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. Unless specifically instructed by Owner, the Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect/Engineer will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

B. Reporting. Based on the site visits, the Architect/Engineer will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect/Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect/Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

6.3 Interpretation of Project Plans and Specifications. The Architect/Engineer will be the interpreter of the requirements of the Project Plans and Specifications. Upon receipt of comments or objections by Contractor or Owner, the Architect/Engineer will make decisions on all claims, disputes, or other matters pertaining to the interpretation of the Project Plans and Specifications.

6.4 Rejection of Non-Conforming Work. Upon consultation with Owner, the Architect/Engineer shall have the authority to reject Work which does not conform to the Project Plans and Specifications.

6.5 Correction of Work. The Contractor shall promptly correct all Work rejected by the Architect/Engineer for being defective or as failing to conform to the Project Plans and Specifications, whether observed before or after the Substantial Completion Date and whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for Architect/Engineer's additional services made necessary thereby.

6.6 Timely Performance of Architect/Engineer. The Contractor shall identify which requests for information or response from the Architect/Engineer have the greatest urgency and those items which require prioritizing in response by the Architect/Engineer. The Contractor shall also identify the preferred time period for response and shall request a response time which is reasonably and demonstrably related to the needs of the Project and Contractor. If Architect/Engineer claims that Contractor's expectations for a response are unreasonable, Owner shall require Architect/Engineer to communicate such claim to Contractor in writing together with the specific time necessary to respond and the date upon which such response will be made. If Contractor believes that Architect/Engineer is not providing timely services or responses, Contractor shall notify Owner of same in writing not less than two (2) weeks before Contractor believes performance or response time from Architect/Engineer is required without risk of delaying the Project.

ARTICLE VII

OWNER'S RIGHTS AND RESPONSIBILITIES

7.1 Project Site; Title. The Owner shall provide the lands upon which the Work under the Contract Documents is to be done, except that the Contractor shall provide all necessary additional land required for the erection of temporary construction facilities and storage of his materials, together with right of access to same. The Owner hereby represents to the Contractor that it currently has and will maintain up through and including the Substantial Completion Date, good title to all of the real property constituting the Project Site. Owner agrees to resolve, at its expense, any disputes relating to the ownership and use of the Project Site which might arise during construction.

7.2 Project Plans and Specifications; Architect/Engineer. The parties hereto acknowledge and agree that Owner has previously entered into an agreement with Architect/Engineer. Pursuant to the terms of such agreement, the Architect/Engineer, as an agent and representative of Owner, is responsible for the preparation of Project Plans and Specifications which consist of drawings, specifications, and other documents setting forth in detail the requirements for the construction of the Project. All such Project Plans and Specifications shall be provided either by Owner or the Architect/Engineer, and Contractor shall be under no obligation to provide same and shall be entitled to rely upon the accuracy and completeness of the Project Plans and Specifications provided by the Architect/Engineer and all preliminary drawings prepared in connection therewith. The Contractor will be furnished a reproducible set of all drawings and

specifications reasonably necessary for the performance of Contractor's services hereunder and otherwise ready for printing. The Contractor shall be notified of any written modification in the agreement between Owner and Architect/Engineer.

7.3 Surveys; Soil Tests and Other Project Site Information. Owner shall be responsible for providing a legal description and certified land survey of the Project Site in a form and content and with such specificity as may be required by the Architect/Engineer and Contractor to perform their services. To the extent deemed necessary by Owner and Architect/Engineer, and solely at Owner's expense, Owner may engage the services of a geotechnical consultant to perform test borings and other underground soils testing as may be deemed necessary by the Architect/Engineer or the Contractor. Contractor shall not be obligated to provide such surveys or soil tests and shall be entitled to rely upon the accuracy and completeness of the information provided; subject, however, to the provisions of Section 2.4.S hereof. Owner shall provide Contractor, as soon as reasonably possible following the execution of the Contract Documents, all surveys or other survey information in its possession describing the physical characteristics of the Project Site, together with soils reports, subsurface investigations, utility locations, deed restrictions, easements, and legal descriptions then in its possession or control. Upon receipt of all surveys, soils tests, and other Project Site information, Contractor shall promptly advise Owner of any inadequacies in such information and of the need for any additional surveys, soils or subsoil tests. In performing this Work, Contractor shall use the standard of care of experienced contractors and will use its best efforts timely to identify all problems or omissions. Owner shall not be responsible for any delay or damages to the Contractor for any visible or disclosed site conditions or disclosed deficiencies in the Project Site which should have been identified by Contractor and corrected by Owner prior to the execution of the Contract Documents.

7.4 Information; Communication; Coordination. The Owner's Project Representative shall examine any documents or requests for information submitted by the Contractor and shall advise Contractor of Owner's decisions pertaining thereto within a reasonable period of time to avoid unreasonable delay in the progress of the Contractor's services. Contractor shall indicate if any such documents or requests warrant priority consideration. However, decisions pertaining to approval of the Project Schedule as it relates to the date of Substantial Completion, the Project Cost, Contractor's compensation, approving or changing the Contract Sum shall only be effective when approved by Owner in the form of a written Change Order or amendment to the Contract Documents. Owner reserves the right to designate a different Owner's Project Representative provided Contractor is notified in writing of any such change. Owner and Architect/Engineer may communicate with Subcontractors, materialmen, laborers, or suppliers engaged to perform services on the Project, but only for informational purposes. Neither the Owner nor the Architect/Engineer shall attempt to direct the Work of or otherwise interfere with any Subcontractor, materialman, laborer, or supplier, or otherwise interfere with the Work of the Contractor. Owner shall furnish the data required of Owner under the Contract Documents promptly.

7.5 Governmental Body. The Contractor recognizes that the Owner is a governmental body with certain procedural requirements to be satisfied. The Contractor has and will make reasonable allowance in its performance of services for such additional time as may be required for approvals and decisions by the Owner and any other necessary government agency.

7.6 Pre-Completion Acceptance. The Owner shall have the right to take possession of and use any completed portions of the Work, although the time for completing the entire Work

or such portions may not have expired, but such taking possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents.

7.7 Ownership and Use of Drawings, Specifications and Other Instruments of Service.

- (1) The Architect/Engineer and the Architect/Engineer's consultants shall be deemed the authors and owners of their respective instruments of service, including the Project Plans and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the instruments of service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect/Engineer's or Architect/Engineer's consultants' reserved rights.
- (2) The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the drawings and specifications provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Project Plans and Specifications or other instruments of service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the drawings or specifications on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect/Engineer and the Architect/Engineer's consultants.

7.8 Owner's Project Representative. Owner's Project Representative is Owner's Agent, who will act as directed by and under the supervision of the Owner, and who will confer with Owner/Architect/Engineer regarding his actions. The Owner's Project Representative's dealings in matters pertaining to the on-site Work shall, in general, be only with the Owner/Architect/Engineer and Contractor and dealings with Subcontractors shall only be through or with the full knowledge of Contractor.

A. Responsibilities. Except as otherwise instructed in writing by Owner, the Owner's Project Representative will:

- (1) Attend preconstruction conferences; arrange a schedule of progress meetings and other job conferences as required in consultation with Owner/Architect/Engineer and notify those expected to attend in advance; and attend meetings and maintain and circulate copies of minutes thereof;
- (2) Serve as Owner/Architect/Engineer's liaison with Contractor, working principally through Contractor's superintendent, to assist in understanding the intent of the Contract Documents. As requested by Owner/Architect/Engineer, assist in obtaining additional details or information when required at the job site for proper execution of the Work;

- (3) Report to Owner/Architect/Engineer whenever he believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents;
- (4) Accompany visiting inspectors representing public or other agencies having jurisdiction over the project; record the outcome of these inspections and report to Owner/Architect/Engineer;
- (5) Review applications for payment with Contractor for compliance with the established procedure for their submission and forward them with recommendations to Owner/Architect/Engineer; and
- (6) Perform those duties as set forth elsewhere within the Contract Documents.

B. Limitations. Except upon written instructions of Owner, Owner's Project Representative shall not:

- (1) Authorize any deviation from the Contract Documents or approve any substitute materials or equipment;
- (2) Exceed limitations on Owner/Architect/Engineer's authority as set forth in the Contract Documents;
- (3) Undertake any of the responsibilities of Contractor, Subcontractors or Contractor's superintendent, or expedite the Work;
- (4) Advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents;
- (5) Advise on or issue directions as to safety precautions and programs in connection with the Work;
- (6) Authorize Owner to occupy the project in whole or in part; or
- (7) Participate in specialized field or laboratory tests.

ARTICLE VIII

RESOLUTION OF DISAGREEMENTS;

CLAIMS FOR COMPENSATION

8.1 Owner to Decide Disputes. The Owner shall reasonably decide all questions and disputes (with the exception of matters pertaining to the interpretation of the Project Plans and Specifications which shall be resolved by the Architect/Engineer pursuant to Section 6.3) that may

arise in the execution and fulfillment of the services provided for under the Contract Documents, in accordance with the Procurement Ordinance.

8.2 Finality. The decision of the Owner upon all claims, questions, disputes and conflicts shall be final and conclusive, and shall be binding upon all parties to the Contract Documents, subject to judicial review as provided in Section 8.5 below.

8.3 No Damages for Delay. If at any time Contractor is delayed in the performance of Contractor's responsibilities under the Contract Documents as the result of a default or failure to perform in a timely manner by Owner or Owner's agents or employees, Contractor shall not be entitled to any damages except for compensation specifically authorized in Article III. Contractor's sole remedy will be a right to extend the time for performance. Nothing herein shall preclude Contractor from any available remedy against any responsible party other than Owner. Contractor shall be responsible for liquidated damages for delay if otherwise provided for in the Contract Documents.

8.4 Permitted Claims Procedure. Where authorized or permitted under the Contract Documents, all claims for additional compensation by Contractor, extensions of time affecting the Substantial Completion Date, for payment by the Owner of costs, damages or losses due to casualty, Force Majeure, Project Site conditions or otherwise, shall be governed by the following:

- (1) All claims must be submitted as a request for Change Order in the manner as provided in Article V.
- (2) The Contractor must submit a notice of claim to Owner's Project Representative and to the Architect/Engineer within fifteen (15) days of the beginning of such occurrence. Failure to submit a claim within the requisite 15-day period shall constitute a waiver of the right to pursue said claim.
- (3) Within twenty (20) days of submitting its notice of claim, the Contractor shall submit to the Owner's Project Representative its request for Change Order, which shall include a written statement of all details of the claim, including a description of the Work affected.
- (4) After receipt of a request for Change Order, the Owner's Project Representative, in consultation with the Architect/Engineer, shall deliver to the Contractor, within twenty (20) days after receipt of request, its written response to the claim.
- (5) In the event the Owner and Contractor are unable to agree on the terms of a Change Order, the Owner shall have the option to instruct the Contractor to proceed with the Work. In that event, the Owner shall pay for those parts of the Work, the scope and price of which are not in dispute. The balance of the disputed items in the order to proceed will be resolved after completion of the Work, based upon completed actual cost.
- (6) The rendering of a decision by Owner with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any

exercise by Owner or Contractor of such right or remedies as either may otherwise have under the Contract Documents or by laws or regulations in respect of any such claim, dispute or other matter.

8.5 Contract Claims and Disputes. After completion of the process set forth in Section 8.4 above, any unresolved dispute under this Agreement shall be decided by the Purchasing Official in accordance with Section 2-26-63 of the Manatee County Code of Laws, subject to an administrative hearing process as provided in Section 2-26-64. The decision of the hearing officer in accordance with Section 2-26-64 of the Manatee County Code of Laws shall be the final and conclusive decision subject to exclusive judicial review in circuit court by a petition for certiorari.

8.6 Claims for Consequential Damages. The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

- (1) damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons, unless any of such damages or losses are covered by insurance placed by the Contractor; and
- (2) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article XIV. Nothing contained in this Section 8.6 shall be deemed to preclude assessment of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE IX

INDEMNITY

9.1 Indemnity.

A. Indemnification Generally. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect/Engineer, Architect/Engineer's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss or expense is caused in part by a

party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.1.

B. Indemnification; Enforcement Actions. The Contractor's duty to indemnify and hold harmless the Owner in Section 9.1 above shall extend to fines, penalties and costs incurred by the Owner as related to any enforcement action taken by local, state, regional or federal regulatory entities. The Owner may deduct any of such fines, penalties and costs as described in this Section from any unpaid amounts then or thereafter due the Contractor under the Contract Documents. Any of such fines, penalties and costs not so deducted from any unpaid amounts due the Contractor shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at the maximum allowable rate.

C. Claims by Employees. In claims against any person or entity indemnified under this Section 9.1 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 9.1.A. shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

9.2 Duty to Defend. The Contractor shall defend the Owner in any action, lawsuit, mediation or arbitration arising from the alleged negligence, recklessness or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Work. Notwithstanding any other provisions within this Article IX, so long as Contractor, through its own counsel, performs its obligation to defend the Owner pursuant to this Section, Contractor shall not be required to pay the Owner's costs associated with the Owner's participation in the defense.

ARTICLE X

ACCOUNTING RECORDS; OWNERSHIP OF DOCUMENTS

10.1 Accounting Records. Records of expenses pertaining to all services performed shall be kept in accordance with generally accepted accounting principles and procedures.

10.2 Inspection and Audit. The Contractor's records shall be open to inspection and subject to examination, audit, and/or reproduction during normal working hours by the Owner's agent or authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the Contractor or any of its payees during the performance of the Work. These records shall include, but not be limited to, accounting records, written policies and procedures, Subcontractor files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, Change Order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to the Contract Documents. They shall also

include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Contract Documents. For such audits, inspections, examinations and evaluations, the Owner's agent or authorized representative shall have access to said records from the effective date of the Contract Documents, for the duration of Work, and until three (3) years after the date of final payment by the Owner to the Contractor pursuant to the Contract Documents.

10.3 Access. The Owner's agent or authorized representative shall have access to the Contractor's facilities and all necessary records to conduct audits in compliance with this Article. The Owner's agent or authorized representative shall give the Contractor reasonable advance notice of intended inspections, examinations, and/or audits.

10.4 Ownership of Documents. Upon obtainment of Substantial Completion or termination of the Agreement, all records, documents, tracings, plans, specifications, maps, evaluations, reports, transcripts and other technical data, other than working papers, prepared or developed by the Contractor shall be delivered to and become the property of the Owner. The Contractor at its own expense may retain copies for its files and internal use.

ARTICLE XI

PUBLIC CONTRACT LAWS

11.1 Equal Opportunity Employment.

A. Employment. The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, disability or age, and will take affirmative action to ensure that all employees and applicants are afforded equal employment opportunities without discrimination because of race, creed, sex, color, national origin, disability or age. Such action will be taken with reference to, but shall not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of training or retraining, including apprenticeship and on-the-job training.

B. Participation. No person shall, on the grounds of race, creed, sex, color, national origin, disability or age, be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of the Agreement.

11.2 Immigration Reform and Control Act of 1986. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, located at 8 U.S.C. Section 1324, et seq., and regulations relating thereto. Failure to comply with the above statutory provisions shall be considered a material breach and shall be grounds for immediate termination of this Agreement.

11.3 No Conflict of Interest. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor 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 Contractor, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement.

A. No Interest in Business Activity. By accepting award of this Agreement, the Contractor, which shall include its directors, officers and employees, represents that it presently has no interest in and shall acquire no interest in any business or activity which would conflict in any manner with the performance of services required hereunder, including without limitation as described in the Contractor's own professional ethical requirements. An interest in a business or activity which shall be deemed a conflict includes but is not limited to direct financial interest in any of the material and equipment manufacturers, suppliers, distributors, or contractors who will be eligible to supply material and equipment for the Project for which the Contractor is furnishing its services required hereunder.

B. No Appearance of Conflict. The Contractor shall not knowingly engage in any contractual or professional obligations that create an appearance of a conflict of interest with respect to the services provided pursuant to the Agreement. The Contractor has provided the Affidavit of No Conflict, incorporated into the Contract Documents as Exhibit "C", as a material inducement for Owner entering the Agreement. If, in the sole discretion of the County Administrator or designee, a conflict of interest is deemed to exist or arise during the term of this Agreement, the County Administrator or designee may cancel this Agreement, effective upon the date so stated in a written notice of cancellation, without penalty to the Owner.

11.4 Truth in Negotiations. By execution of the Contract Documents, the Contractor certifies to truth-in-negotiations and that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. Further, the original Contract Sum and any additions thereto shall be adjusted to exclude any significant sums where the Owner determines the Contract Sum was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. Such adjustments must be made within one (1) year after final payment to the Contractor.

11.5 Public Entity Crimes. The Contractor is directed to the Florida Public Entity Crimes Act, Section 287.133, Florida Statutes, specifically section 2(a), and the Owner's requirement that the Contractor comply with it in all respects prior to and during the term of the Agreement.

ARTICLE XII

FORCE MAJEURE, FIRE OR OTHER CASUALTY

12.1 Force Majeure.

A. Unavoidable Delays. Delays in any performance by any party contemplated or required hereunder due to fire, flood, sinkhole, earthquake or hurricane, acts of God, unavailability of materials, equipment or fuel, war, declaration of hostilities, revolt, civil strife, altercation or commotion, strike, labor dispute, or epidemic, archaeological excavation, lack of or failure of transportation facilities, or any law, order, proclamation, regulation, or ordinance of any

government or any subdivision thereof, or for any other similar cause to those enumerated, beyond the reasonable control and which with due diligence could not have been reasonably anticipated, shall be deemed to be events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any Work or obligation pursuant to the Contract Documents for any of the events of Force Majeure stated in this Section 12.1, the date for performance required or contemplated by the Contract Documents shall be extended by the number of calendar days such party is actually delayed.

B. Concurrent Contractor Delays. If a delay is caused for any reason provided in Section 12.1.A. and during the same time period a delay is caused by Contractor, the date for performance shall be extended as provided in 12.1.A. but only to the extent the time is or was concurrent.

C. Notice; Mitigation. The party seeking excuse for nonperformance based on Force Majeure shall give written notice to the Owner, if with respect to the Contractor, or to the Contractor if with respect to the Owner, specifying its actual or anticipated duration. Each party seeking excuse from nonperformance based on Force Majeure shall use its best efforts to rectify any condition causing a delay and will cooperate with the other party, except that neither party shall be obligated to incur any unreasonable additional costs and expenses to overcome any loss of time that has resulted.

12.2 Casualty; Actions by Owner and Contractor. During the construction period, if the Project or any part thereof shall have been damaged or destroyed, in whole or in part, the Contractor shall promptly make proof of loss; and Owner and Contractor shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon such damage or destruction. The Contractor shall diligently assess the damages or destruction and shall prepare an estimate of the cost, expenses, and other charges, including normal and ordinary compensation to the Contractor, necessary for reconstruction of the Project substantially in accordance with the Project Plans and Specifications. Within fifteen (15) days following satisfaction of the express conditions described in subsections (1), (2) and (3) below, the Contractor covenants and agrees diligently to commence reconstruction and to complete the reconstruction or repair of any loss or damage by fire or other casualty to the Project to substantially the same size, floor area, cubic content, and general appearance as prior to such loss or damage:

- (1) Receipt by the Owner or the trustee of the proceeds derived from collection of all valid claims against insurers or others based upon such damage or destruction, and receipt of other sums from any source such that the funds necessary to pay the Project Cost and any additions to the Project Cost necessitated for repair or reconstruction are available;
- (2) Written agreement executed by the Contractor and the Owner, by amendment to the Contract Documents or otherwise, authorizing and approving the repair or reconstruction and any additions to the Project Cost necessitated thereby, including any required adjustment to the Contract Sum; and
- (3) Final approval by the Owner of the Project Plans and Specifications for such repair or reconstruction and issuance of any required building permit.

12.3 Approval of Plans and Specifications. The Owner agrees to approve the plans and specifications for such reconstruction or repair if the reconstruction or repair contemplated by such plans and specifications is economically feasible, and will restore the Project, or the damaged portion thereof, to substantially the same condition as prior to such loss or damage, and such plans and specifications conform to the applicable laws, ordinances, codes, and regulations. The Owner agrees that all proceeds of any applicable insurance or other proceeds received by the Owner or the Contractor as a result of such loss or damage shall be used for payment of the costs, expenses, and other charges of the reconstruction or repair of the Project.

12.4 Notice of Loss or Damage. The Contractor shall promptly give the Owner written notice of any significant damage or destruction to the Project, defined as loss or damage which it is contemplated by Contractor will increase the Contract Sum or extend the Substantial Completion Date, stating the date on which such damage or destruction occurred, the then expectations of Contractor as to the effect of such damage or destruction on the use of the Project, and the then proposed schedule, if any, for repair or reconstruction of the Project. Loss or damage which the Contractor determines will not affect the Contract Sum or Substantial Completion Date will be reported to Owner and Architect/Engineer immediately, and associated corrective actions will be undertaken without delay.

ARTICLE XIII

REPRESENTATIONS, WARRANTIES AND COVENANTS

13.1 Representations and Warranties of Contractor. The Contractor represents and warrants to the Owner each of the following.

A. The Contractor is a construction company, organized under the laws of the State of _____, authorized to transact business in the State of Florida, with _____ as the primary qualifying agent. Contractor has all requisite power and authority to carry on its business as now conducted, to own or hold its properties, and to enter into and perform its obligations hereunder and under each instrument to which it is or will be a party, and is in good standing in the State of Florida.

B. Each Contract Document to which the Contractor is or will be a party constitutes, or when entered into will constitute, a legal, valid, and binding obligation of the Contractor enforceable against the Contractor in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

C. There are no pending or, to the knowledge of the Contractor, threatened actions or proceedings before any court or administrative agency, within or without the State of Florida, against the Contractor or any partner, officer, or agent of the Contractor which question the validity of any document contemplated hereunder, or which are likely in any case, or in the

aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder, or materially adversely affect the financial condition of the Contractor.

D. The Contractor has filed or caused to be filed all federal, state, local, or foreign tax returns, if any, which were required to be filed by the Contractor, and has paid, or caused to be paid, all taxes shown to be due and payable on such returns or on any assessments levied against the Contractor.

E. Neither Contractor nor any agent or person employed or retained by Contractor has acted fraudulently or in bad faith or in violation of any statute or law in the procurement of this Agreement.

F. The Contractor shall timely fulfill or cause to be fulfilled all of the terms and conditions expressed herein which are within the control of the Contractor or which are the responsibility of the Contractor to fulfill. The Contractor shall be solely responsible for the means and methods of construction.

G. It is recognized that neither the Architect/Engineer, the Contractor, nor the Owner has control over the cost of labor, materials, or equipment, over a Subcontractor's methods of determining bid prices, or over competitive bidding, market, or negotiating conditions.

H. During the term of the Contract Documents, and the period of time that the obligations of the Contractor under the Contract Documents shall be in effect, the Contractor shall cause to occur and to continue to be in effect those instruments, documents, certificates, and events contemplated by the Contract Documents that are applicable to, and the responsibility of, the Contractor.

I. The Contractor shall assist and cooperate with the Owner and shall accomplish the construction of the Project in accordance with the Contract Documents and the Project Plans and Specifications, and will not knowingly violate any laws, ordinances, rules, regulations, or orders that are or will be applicable thereto.

J. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective, and that Owner, representatives of Owner, and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. Contractor shall give Architect/Engineer timely notice of readiness of the Work for all required approvals and shall assume full responsibility, including costs, in obtaining required tests, inspections, and approval certifications and/or acceptance, unless otherwise stated by Owner.

K. If any Work (including Work of others) that is to be inspected, tested, or approved is covered without written concurrence of Architect/Engineer, it must, if requested by Architect/Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Architect/Engineer timely notice of Contractor's intention to cover the same and Architect/Engineer has not acted with reasonable promptness in response to such notice. Neither observations by Architect/Engineer nor inspections, tests, or approvals by others shall relieve Contractor from Contractor's obligations to perform the Work in accordance with the Contract Documents.

L. If the Work is defective, or Contractor fails to supply sufficient skilled workers, or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof and terminate payments to the Contractor until the cause for such order has been eliminated. Contractor shall bear all direct, indirect and consequential costs for satisfactory reconstruction or removal and replacement with non-defective Work, including, but not limited to fees and charges of Architect/Engineers, attorneys and other professionals and any additional expenses experienced by Owner due to delays to other Contractors performing additional Work and an appropriate deductive change order shall be issued. Contractor shall further bear the responsibility for maintaining the schedule and shall not be entitled to an extension of the Contract Time or the recovery of delay damages due to correcting or removing defective Work.

M. If Contractor fails within seven (7) days after written notice to correct defective Work, or fails to perform the Work in accordance with the Contract Documents, or fails to comply with any other provision of the Contract Documents, Owner may correct and remedy any such deficiency to the extent necessary to complete corrective and remedial action. Owner may temporarily exclude Contractor from all or part of the site, temporarily take possession of all or part of the Work, Contractor's tools, construction equipment and machinery at the site or for which Owner has paid Contractor but which are stored elsewhere, all for such duration as is reasonably necessary to correct the deficiency. All direct and indirect costs of Owner in exercising such rights and remedies will be charged against Contractor in an amount approved as to reasonableness by Architect/Engineer and a Change Order will be issued incorporating the necessary revisions.

N. If within three (3) years after the Substantial Completion Date or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, either correct such defective Work or if it has been rejected by Owner, remove it from the site and replace it with non-defective Work. If Contractor does not promptly comply with the terms of such instruction, Owner may have the defective Work corrected/removed and all direct, indirect and consequential costs of such removal and replacement will be paid by Contractor. Failing payment by the Contractor and notwithstanding any other provisions of the Contract Documents to the contrary, Owner shall have the right to bring a direct action in the Circuit Court to recover such costs.

13.2 Representations of the Owner. To the extent permitted by law, the Owner represents to the Contractor that each of the following statements is presently true and accurate:

- A. The Owner is a validly existing political subdivision of the State of Florida.
- B. The Owner has all requisite corporate or governmental power and authority to carry on its business as now conducted and to perform its obligations under the Contract Documents and each Contract Document contemplated hereunder to which it is or will be a party.
- C. The Contract Documents and each Contract Document contemplated hereby to which the Owner is or will be a party has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the Owner, and neither the

execution and delivery thereof nor compliance with the terms and provisions thereof or hereof: (a) requires the approval and consent of any other person or party, except such as have been duly obtained or as are specifically noted herein; (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Owner; or (c) contravenes or results in any breach of, default under, or result in the creation of any lien or encumbrance upon the Owner under any indenture, mortgage, deed of trust, bank loan, or credit agreement, the charter, ordinances, resolutions, or any other agreement or instrument to which the Owner is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the Owner outstanding on the date of the Contract Documents.

D. The Contract Documents and each document contemplated hereby to which the Owner is or will be a party constitutes, or when entered into will constitute, a legal, valid, and binding obligation of the Owner enforceable against the Owner in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws from time to time in effect which affect creditors' rights generally, and subject to usual equitable principles in the event that equitable remedies are involved.

E. There are no pending or, to the knowledge of the Owner, threatened actions or proceedings before any court or administrative agency against the Owner which question the validity of the Contract Documents or any document contemplated hereunder, or which are likely in any case or in the aggregate to materially adversely affect the consummation of the transactions contemplated hereunder or the financial or corporate condition of the Owner.

F. The Owner shall use due diligence to timely fulfill or cause to be fulfilled all of the conditions expressed in the Contract Documents which are within the control of the Owner or which are the responsibility of the Owner to fulfill.

G. During the pendency of the Work and while the obligations of the Owner under the Contract Documents shall be in effect, the Owner shall cause to occur and to continue to be in effect and take such action as may be necessary to enforce those instruments, documents, certificates and events contemplated by the Contract Documents that are applicable to and the responsibility of the Owner.

H. The Owner shall assist and cooperate with the Contractor in accomplishing the construction of the Project in accordance with the Contract Documents and the Project Plans and Specifications, and will not knowingly violate any laws, ordinances, rules, regulations, orders, contracts, or agreements that are or will be applicable thereto or, to the extent permitted by law, enact or adopt any resolution, rule, regulation, or order, or approve or enter into any contract or agreement, including issuing any bonds, notes, or other forms of indebtedness, that will result in the Contract Documents or any part thereof, or any other instrument contemplated by and material to the timely and effective performance of a party's obligations hereunder, to be in violation thereof.

ARTICLE XIV

TERMINATION AND SUSPENSION

14.1 Termination for Cause by Owner. This Agreement may be terminated by Owner upon written notice to the Contractor should Contractor fail substantially to perform a material obligation in accordance with the terms of the Contract Documents through no fault of the Owner. In the event Owner terminates for cause and it is later determined by a court of competent jurisdiction that such termination for cause was not justified, then in such event such termination for cause shall automatically be converted to a termination without cause pursuant to Section 14.2.

A. Nonperformance. If the Contractor fails to timely perform any of its obligations under the Contract Documents, including any obligation the Contractor assumes to perform Work with its own forces, or if it 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, or fails, without being excused, to maintain an established schedule (failure to maintain schedule shall be defined as any activity that falls thirty (30) days or more behind schedule) which has been adopted by the Construction Team, or it fails to make prompt payment to Subcontractors for materials or labor, or disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of substantial violations of the Agreement the Owner may, after seven (7) days written notice, during which period the Contractor fails to perform such obligation, make good such deficiencies and perform such actions. The Contract Sum shall be reduced by the cost to the Owner of making good such deficiencies, and the Contractor's compensation shall be reduced by an amount required to manage the making good of such deficiencies. Provided, however, nothing contained herein shall limit or preclude Owner from pursuing additional damages from Contractor because of its breach.

B. Insolvency. If the Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed because its insolvency, then the Owner may, without prejudice to any other right or remedy, and after giving the Contractor and its surety, if any, fourteen (14) days written notice, and during which period the Contractor fails to cure the violation, terminate the Agreement. In such case, the Contractor shall not be entitled to receive any further payment. Owner shall be entitled to recover all costs and damages arising because of failure of Contractor to perform as provided in the Contract Documents, as well as reasonable termination expenses, and costs and damages incurred by the Owner may be deducted from any payments left owing the Contractor.

C. Illegality. Owner may terminate the Agreement if Contractor disregards laws or regulations of any public body having jurisdiction.

D. Rights of Owner. The Owner may, after giving Contractor (and the surety, if there is one) seven (7) days written notice, terminate the services of Contractor for cause; exclude Contractor from the Project Site and take possession of the Work and of all Contractor's tools, construction equipment and machinery at the Project Site and use the same to the full extent they could be used (without liability to Contractor for trespass or conversion); incorporate in the Work all materials and equipment stored at the Project Site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment beyond an amount equal to the value of material and equipment not incorporated in the Work, but delivered and suitably stored,

less the aggregate of payments previously made. If the direct and indirect costs of completing the Work exceed the unpaid balance of the Contract Sum, Contractor shall pay the difference to Owner. Such costs incurred by Owner shall be verified by Owner in writing; but in finishing the Work, Owner shall not be required to obtain the lowest quote for the Work performed. Contractor's obligations to pay the difference between such costs and such unpaid balance shall survive termination of the Agreement. In such event and notwithstanding any other provisions of the Contract Documents to the contrary, Owner shall be entitled to bring a direct action in the Circuit Court to recover such costs.

14.2 Termination without Cause by Owner. The Owner, through its County Administrator or designee, shall have the right to terminate the Agreement, in whole or in part, without cause upon sixty (60) calendar days' written notice to the Contractor. In the event of such termination for convenience, the Owner shall compensate Contractor for payments due through the date of termination, and one subsequent payment to cover costs of Work performed through the date of termination, subject to the terms and conditions of Section 3.1. The Contractor shall not be entitled to any other further recovery against the Owner, including, but not limited to, anticipated fees or profit on Work not required to be performed, or consequential damages or costs resulting from such termination.

A. Release of Contractor. As a condition of Owner's termination rights provided for in this subsection, Contractor shall be released and discharged from all obligations arising by, through, or under the terms of the Contract Documents, and the Payment and Performance Bond shall be released. Owner shall assume and become responsible for the reasonable value of Work performed by Subcontractors prior to termination plus reasonable direct close-out costs, but in no event shall Subcontractors be entitled to unabsorbed overhead, anticipatory profits, or damages for early termination.

B. Waiver of Protest. Contractor hereby waives any right to protest the exercise by Owner of its rights under this Section that may apply under the Procurement Ordinance.

14.3 Suspension without Cause. Owner may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by written notice to Contractor, which will fix the date on which Work will be resumed. Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, directly attributable to any suspension if Contractor makes an approved claim therefor.

14.4 Termination Based Upon Abandonment, Casualty or Force Majeure. If, after the construction commencement date (i) Contractor abandons the Project (which for purposes of this paragraph shall mean the cessation of all construction and other activities relating to the Project, excluding those which are necessary to wind down or otherwise terminate all outstanding obligations with respect to the Project, and no recommencement of same within one hundred twenty (120) days following the date of cessation), or (ii) the Project is stopped for a period of thirty (30) consecutive days due to an instance of Force Majeure or the result of a casualty resulting in a loss that cannot be corrected or restored within one hundred twenty (120) days (excluding the time required to assess the damage and complete the steps contemplated under Section 12.2), the Owner shall have the right to terminate the Agreement and pay the Contractor its compensation earned or accrued to date.

14.5 Vacation of Project Site; Delivery of Documents. Upon termination by Owner pursuant to Section 14.2 or 14.4, Contractor shall withdraw its employees and its equipment, if any, from the Project Site on the effective date of the termination as specified in the notice of termination (which effective date shall not be less than two (2) working days after the date of delivery of the notice), regardless of any claim the Contractor may or may not have against the Owner. Upon termination, the Contractor shall deliver to the Owner all original papers, records, documents, drawings, models and other material set forth and described in the Contract Documents.

14.6 Termination by the Contractor. If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) consecutive days by Owner or under an order of court or other public authority, or Owner fails to act on any Application for Payment or fails to pay Contractor any sum finally determined to be due; then Contractor may, upon fourteen (14) days written notice to Owner terminate the Agreement and recover from Owner payment for all Work executed, any expense sustained plus reasonable termination expenses. In lieu of terminating the Agreement, if Owner has failed to act on any Application for Payment or Owner has failed to make any payment as aforesaid, Contractor may upon fourteen (14) days written notice to Owner stop the Work until payment of all amounts then due.

SAMPLE

Exhibit A
Title(s) of Drawings

SAMPLE

Exhibit B
Title(s) of Specifications

SAMPLE

Exhibit C
Affidavit of No Conflict

SAMPLE

Exhibit D
Contractor's Certificate(s) of Insurance

SAMPLE

Exhibit E
Contractor's Payment and Performance Bond

SAMPLE

Exhibit F
Standard Forms

SAMPLE

APPLICATION FOR PAYMENT

Request No.: _____ Project No.: _____
 Purchase Order No.: _____
 County Bid No.: _____
 Consultant: _____

Project: _____
 From: _____ To: _____

CONTRACT PAYMENT SUMMARY

Original Contract Amount:				\$	-
Change Order(s):				\$	-
Change order summary:					
Number	Date Approved	Additive	Deductive		
SUBTOTALS:		\$	-	\$	-
Net change order subtotal (Additive less Deductive):				\$	-
Current Contract Amount (CCA): (Original Amount + Change Order(s))				\$	-
		Previous Status	Total WIP		
Value of the Work in Place (WIP)	\$	-	\$	-	
Value of Stored Materials	\$	-	\$	-	
Total Earned (\$ and % of CCA)	\$	-	\$	-	
Retainage (\$ and % of CCA)	\$	-	\$	-	
Net Earned (Total earned minus retainage)				\$	-
TOTAL PREVIOUS PAYMENTS				\$	-
AMOUNT DUE THIS PAYMENT (Net Earned minus Previous Payments)				\$	-

CONTRACTOR'S AFFIDAVIT OF NOTICE

CERTIFICATE: The undersigned CONTRACTOR certifies that all items and amounts shown on this Application for Payment are on account of work performed, materials supplied and/or materials stored on site and paid for by Contractor in accordance with the Contract Documents with due consideration for previous Payment(s), if any, received by the Contractor from the County, and that the Amount Due this Payment shown is now due.

NOTARY:

CONTRACTOR:

State of Florida, County of _____

 Name of person authorized to sign Affidavit of Notice

Sworn to (or affirmed) and subscribed before me this _____ day of _____ by _____

TITLE

 (Name of person giving notice)

Contractor name, address and telephone no.:

 (Signature of Notary Public - State of Florida)

Print, Type or Stamp Commissioned Name of Notary Public:

Personally Known _____ or Produced Identification _____
 Type of Identification Produced: _____

VERIFICATION, RECOMMENDATION, CONCURRENCES AND APPROVALS

(Signatures)

(Date)

Quantities verified by: _____

Consultant/Engineer: _____

Project Management: _____

Department Head: _____

Payment approved by the Board of County Commissioners: _____

Attested to by the Clerk of Circuit Court: _____

CERTIFICATE OF SUBSTANTIAL COMPLETION (S.C.)	CHECK ONE:	
	Partial	Total
Project Title:	Date Submitted:	
Contractor Data: Name: Address: City/State/Zip:	Project No:	
	S. C. Date (Proposed)	
<p>If the "Partial" completion box above is checked, the following description applies to the work for which substantial completion is being sought. Otherwise, the work described in the Contract including approved changes, if any, is certified to be substantially complete: (Description of the portion of work substantially completed):</p> <p style="text-align: center;">(USE CONTINUATION SHEETS IF NECESSARY)</p>		
<p>A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item does not alter the Contractor's responsibility to complete all of the contract work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by the Contractor within _____ days of substantial completion. The approved substantial completion date is: _____</p>		
_____ Contractor Signature	_____ Date	_____ Engineer's Approval
_____ Printed Name and Title	_____ Date	_____ Printed Name and Title
<p>The Contractor shall be responsible for security, operation, safety, maintenance, HVAC, insurance and warranties in accordance with the Contract. The County will assume the responsibility for paying the cost of electrical power from midnight of the date of Engineer's approval as indicated above.</p> <p>ATTACH THE INSPECTOR'S FINAL WALKTHROUGH LIST OF DEFICIENCIES.</p>		

**FINAL RECONCILIATION, WARRANTY PERIOD DECLARATION
AND CONTRACTOR'S AFFIDAVIT**

Project Title: _____	Date Submitted: _____
----------------------	-----------------------

Contractor Data: Name: _____ Address: _____ City/State/Zip: _____	Project No: _____
	Warranty (months): _____

This Final Reconciliation is for the work performed for Manatee County by the above named contractor, hereinafter called CONTRACTOR, pursuant to the contract dated _____ as amended, and acts as an addendum thereto.

It is agreed that all quantities and prices in the attached Final Pay Estimate No. _____ are correct and that the amount of \$ _____ including retainage is due to the CONTRACTOR, that no claims are outstanding as between the parties, and that the above stated sum represents the entirety of monies owed the CONTRACTOR.

It is further agreed that the warranty period for CONTRACTOR'S work pursuant to the Contract is from _____ to _____

As (title) _____ for CONTRACTOR, I have authority to bind said CONTRACTOR, and as such make this final reconciliation, declaration and affidavit for the purpose of inducing Manatee County to make final payment to CONTRACTOR for work done at/upon _____ under said contract:

CONTRACTOR has paid all social security and withholding taxes accrued in connection with the construction project.

CONTRACTOR has paid all workers' compensation and other insurance premiums incurred in connection with this construction project.

CONTRACTOR has paid for all required permits in connection with this construction project.

All laborers, material, men, suppliers, subcontractors and service professionals who worked for and/or supplied materials, equipment and/or services to the CONTRACTOR under this construction contract have been paid in full.

(Affiant Signature)

NOTARY:
State of Florida, County of _____, Sworn to (or affirmed) and subscribed before me this _____ day of _____, _____, by _____ (person giving notice).

Signature of Notary Public - State of Florida: _____
Print, Type or Stamp Commissioned Name of Notary Public: _____

Personally Known or Produced Identification
Type of Identification Produced _____

JUSTIFICATION FOR CHANGE

Change Order No :

Project Number:

1. NECESSITY FOR CHANGE:



2. Is change an alternate bid? (If yes, explain)

3. Does change substantially alter the physical size of the project? (If yes, explain)

4 Effect of this change on other "Prime" contractors?

5 Has the Surety and insurance company been notified, if applicable? CONTRACTOR RESPONSIBILITY

**EXHIBIT A
DESIGN-BUILD AMENDMENT**

This Amendment (“Amendment”) is incorporated into the accompanying Design Build Agreement for _____, dated as of _____ (the “Agreement”), by and between Manatee County, a political subdivision of the State of Florida, referred to herein as “Owner”, and the firm of _____, incorporated in the State of _____ and registered and licensed to do business in the State of Florida (License # _____), referred to herein as “Design-Builder”.

The Owner and Design-Builder hereby amend the Agreement as follows:

TABLE OF ARTICLES

- I CONTRACT SUM**
- II CONTRACT TIME**
- III INFORMATION UPON WHICH AMENDMENT IS BASED**
- IV DESIGN-BUILDER’S PERSONNEL, CONTRACTORS AND SUPPLIERS**
- V COST OF THE WORK**

**ARTICLE I
CONTRACT SUM**

1.1 Contract Sum. The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder’s performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

- Stipulated Sum, in accordance with Section 1.2 below
- Cost of the Work plus the Design-Builder’s Fee, in accordance with Section 1.3 below
- Cost of the Work plus the Design-Builder’s Fee with a Guaranteed Maximum Price, in accordance with Section 1.4 below

(Based on the selection above, complete Section 1.2, 1.3 or 1.4 below.)

1.2 Stipulated Sum.

- A. The Stipulated Sum shall be ____ dollars (\$____), subject to authorized adjustments as provided in the Design-Build Documents.
- B. The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)
- C. Unit prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

1.3 Cost of the Work Plus Design-Builder’s Fee.

- A. The Cost of the Work is as defined in Article V, Cost of the Work.
- B. The Design-Builder’s Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder’s Fee, and the method for adjustment to the Fee for changes in the Work.)

1.4 Cost of the Work Plus Design-Builder’s Fee With a Guaranteed Maximum Price.

- A. The Cost of the Work is as defined in Article V, Cost of the Work.
- B. The Design-Builder’s Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder’s Fee, and the method for adjustment to the Fee for changes in the Work.)
- C. Guaranteed Maximum Price. The Sum of the Cost of the Work and the Design-Builder’s Fee is guaranteed by the Design-Builder not to exceed ____ dollars (\$____), subject to additions and deductions for changes in the work as provided

in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

D. Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide information below or reference an attachment.)

E. The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

F. Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
-------------	------------------------------	--------------------------------

G. Assumptions, if any, on which the Guaranteed Maximum Price is based:

1.5 Payments.

A. Progress Payments.

- (1) Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.
- (2) The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:
- (3) With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.
- (4) With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.
- (5) In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 1.5.A(3) or 1.5.A(4), or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.
- (6) Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

B. Progress Payments-Stipulated Sum.

- (1) Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.
- (2) Subject to other provisions of the Design-Builder Documents, the amount of each progress payment shall be computed as follows:
 - .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%). Pending final determination of costs to the Owner of changes in the work, amounts not in dispute shall be included as provided in Section 6.6 of the Agreement;
 - .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), supported by paid receipts, less retainage of five percent (5%);
 - .3 Subtract the aggregate of previous payments made by the Owner; and
 - .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.
- (3) The progress payment amount determined in accordance with Section 1.5.B(2) shall be further modified under the following circumstances:
 - .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
 - .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10 of the Agreement.

C. Progress Payments-Cost of the Work Plus a Fee.

- (1) Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.
- (2) Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:
 - .1 Take the Cost of the Work as described in Section 1.5C.(1) above;
 - .2 Add the Design-Builder's Fee, less retainage of five percent (5%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section 1.5.C(2).1 at the rate stated in Section 1.3.B; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
 - .3 Subtract retainage of five percent (5%) from that portion of the Work that the Design-Builder self-performs;
 - .4 Subtract the aggregate of previous payments made by the Owner;
 - .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 1.5.A(4) or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
 - .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.
- (3) The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

D. Progress Payments-Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

- (1) Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that had actually been incurred by the Design-Builder on account of that portion of the Work for which

the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

- (2) Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:
 - .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of costs to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.6 of the Agreement.
 - .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), supported by paid receipts;
 - .3 Add the Design-Builder's Fee, less retainage of five percent (5%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section 1.4.B or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
 - .4 Subtract retainage of five percent (5%) from that portion of the Work that the Design-Builder self-performs;
 - .5 Subtract the aggregate of previous payments made by the Owner;
 - .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 1.5.A(4) to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
 - .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.
- (3) The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

E. Reduction or limitation of retainage.

Upon completion of at least fifty percent (50%) of the Work, as determined by the Owner, the Owner may reduce to two and one-half percent (2.5%) the amount of retainage withheld from each subsequent progress payment.

F. Final Payment.

- (1) Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Agreement and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.
- (2) If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.A of the Agreement.

**ARTICLE II
CONTRACT TIME**

2.1 Contract Time. Contract Time is the period of time, including authorized adjustments, for Substantial Completion of the Work.

2.2 Substantial Completion. The Design-Builder shall achieve Substantial Completion of the Work not later than ___ () days from the date of this Agreement, or as follows:

(Insert number of calendar days. Alternately, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work

Substantial Completion Date

subject to adjustments of the Contract Time as provided in the Design-Build Documents. The Design-Builder’s failure to achieve Substantial Completion within the Contract Time will result in the Design-Builder being liable for payment to Owner of liquidated damages as set forth in Section 8.2.C of the Agreement.

**ARTICLE III
INFORMATION UPON WHICH AMENDMENT IS BASED**

3.1 Documents. The Contract Sum and Contract Time set forth in this Amendment are based on the following:

Document	Title	Date	Pages
----------	-------	------	-------

A. The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

B. The Specifications:

(Either list the specifications here or refer to an exhibit to this Amendment.)

Section	Title	Date	Pages
---------	-------	------	-------

C. The Drawings:

(Either list the drawings here or refer to an exhibit to this Amendment.)

Number	Title	Date
--------	-------	------

D. The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner’s Criteria, identify the document or documents that comprise Sustainability Plan by title, date and

number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objectives; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's role and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews; testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project.)

	Title	Date	Pages
E.	Other identifying information:		
F.	Allowances and Contingencies: <i>(Identify any agreed upon allowances and contingencies, including a statement of their basis.)</i>		
	.1 Allowances		
	.2 Contingencies		
G.	Design-Builder's assumptions and clarifications:		
H.	Deviations from the Owner's Criteria as adjusted by a Modification:		
I.	To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submission below:		

ARTICLE IV

DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

4.1 Personnel. The Design-Builder's key personnel are identified below:
(Identify name, title and contact information.)

- .1 Superintendent
- .2 Project Manager
- .3 Others

4.2 Consultants, Contractors. The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

(List name, discipline, address and other information.)

**ARTICLE V
COST OF THE WORK**

5.1 Costs To Be Reimbursed as Part of the Agreement.

- A. Labor Cost. Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.
- B. With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.
(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person included/Status (full-time/part-time)/Rate(\$0.00)/Rate(unit of time)

- (1) Wages and salaries of the Design-Builder's supervisory or 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.
- (2) Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section 5.1.A.
- (3) Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect/Engineer or any Consultant, Contractor or supplier, with the Owner's prior approval.

- C. Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.
- D. Costs of Materials and Equipment Incorporated in the Completed Construction.
- (1) Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.
 - (2) Costs of materials described in the preceding Section 5.1.D(1) in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.
- E. Costs of Other Materials and Equipment, Temporary Facilities and Related Items.
- (1) Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.
 - (2) Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.
 - (3) Costs of removal of debris from the site of the Work and its proper and legal disposal.
 - (4) Costs of document reproduction, electronic communications, postage and parcel delivery charges, dedicated data and communications service, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.
 - (5) Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.
- F. Miscellaneous Costs.

- (1) Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Agreement and, with the Owner's prior approval, self-insurance costs for either full or partial amounts of the coverages required by the Design-Build Documents.
- (2) Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.
- (3) Fees and assessments for the building permit and for other permits, licenses and inspections which the Design-Builder is required by the Design-Build Documents to pay.
- (4) Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 11.2 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section 5.1.F(3).
- (5) Royalties and license fees paid for the use of particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded pursuant to Section 3.1.O of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.
- (6) With the Owner's prior written approval, costs for electronic equipment and software directly related to the Work.
- (7) Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.
- (8) With the Owner's prior written approval, legal, mediation and arbitration costs, including attorney's fees, other than those arising from the disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.
- (9) With the Owner's prior written approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.
- (10) That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

G. Other Costs and Emergencies.

- (1) Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.
- (2) Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
- (3) Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

H. Related Party Transactions.

- (1) The term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term “related party” includes any member of the immediate family of any person identified above.
- (2) If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section 5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section 5.4.

5.2 Costs Not to Be Reimbursed. The Cost of the Work shall not include the items listed below:

- A. Salaries and other compensation of the Design-Builder’s personnel stationed at the Design-Builder’s principal office or offices other than the site office, except as specifically provided in Section 5.1.B;
- B. Expenses of the Design-Builder’s principal office and offices other than the site offices;
- C. Overhead and general expenses, except as may be expressly included in Section 5.1;

- D. The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- E. Except as provided in Section 5.1.G(3), costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Agreement;
- F. Any cost not specifically and expressly described in Section 5.1; and
- G. Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

5.3 Discounts, Rebates, and Refunds.

- A. Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.
- B. Amounts that accrue to the Owner in accordance with Section 5.3.A shall be credited to the Owner as a deduction from the Cost of the Work.

5.4 Other Agreements.

- A. When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.
- B. Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design-Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner

to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section 5.5, below.

- C. The agreements between the Design-Builder and Architect, Contractors and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

5.5 Accounting Records. The Design-Builder shall keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as may be necessary for proper financial management under the Agreement and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entities, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Agreement. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer periods as may be required by law.

WHEREFORE, the parties hereto have entered into this Amendment as of the date last executed below.

Name of Design-Builder

By: _____

Printed Name: _____

Title: _____

Date: _____

MANATEE COUNTY, a political subdivision
of the State of Florida

By: _____

Printed Name: _____

Title: _____

Date: _____