

RFQ NO.20-TA003403CD
DESIGN-BUILD SERVICES FOR
SOUTHEAST WATER RECLAMATION
FACILITY CLOTH MEDIA AUTOMATIC
BACKWASH FILTERS
(906-25)
July 14, 2020

Manatee County BCC
Procurement Division
1112 Manatee Avenue West Ste 803
Bradenton, FL 34205
purchasing@mymanatee.org



ADVERTISEMENT**REQUEST FOR QUALIFICATIONS NO. 20-TA003403CD****DESIGN-BUILD SERVICES FOR SOUTHEAST WATER RECLAMATION FACILITY CLOTH MEDIA AUTOMATIC BACKWASH FILTERS**

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 and construction 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 **August 13, 2020 by 3:00 P.M. ET**. Proposals must be delivered to the following location: Manatee County Administration Building, 1112 Manatee Ave. W., Suite 803, 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, Suite 803.

SOLICITATION INFORMATION CONFERENCE:

A non-mandatory Information Conference will be held at 10:00 AM on July 23, 2020 at the Southeast Water Reclamation Facility, 3331 Lena Road, Bradenton, FL 34211. A site tour will be conducted immediately following the Information Conference.

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 July 31, 2020. 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: Chris Daley, CPPO, CPPB, Procurement Project Manager
(941) 749-3048, Fax (941) 749-3034
Email: chris.daley@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 and construction services as identified in this RFQ.

A.01 INFORMATION CONFERENCE AND SITE VISIT

A non-mandatory Information Conference will be held at 10:00 AM on July 23, 2020 at the Southeast Water Reclamation Facility, 3331 Lena Road, Bradenton, FL 34211. A site tour will be conducted immediately following the Information Conference. Attendance is not mandatory, but is strongly encouraged.

A.02 DUE DATE AND TIME

The Due Date and Time for submission of Proposals in response to this Request for Qualifications (RFQ) is **August 13, 2020 by 3:00 P.M. ET**. Proposals must be delivered to the following location: Manatee County Administration Building, 1112 Manatee Ave. W., Suite 803, 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, 8th Floor, Suite 803, 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".
- Four (4) 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. 20-TA003403CD, Design-Build Services for Southeast Water Reclamation Facility Cloth Media Automatic Backwash Filters, 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, Suite 803
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 Attachment B, 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, Suite 803, 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 Procurement 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 Procurement Official or designee, unless otherwise directed by the Procurement 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-responsible 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 Attachment "B" 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: DEBBIE.SCACCIANOCE@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:

1. Trade secret requests made after the opening will not be considered. However, County reserves the right to clarify the Proposer's request for trade secret at any time; and
2. 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
3. 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.

Offeror 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):
 - i. 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.
 - ii. 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.
 - iii. 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 Procurement 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, Suite 803, 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 Procurement 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 Bidder shall ensure all its electronic information, documents, applications, reports, and deliverables required under the Agreement 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 Bidder shall provide clear points of contact for each document and information technology to direct users in how to obtain alternate formats. Further, successful Bidder shall develop accommodation strategies for those non-compliant resources and implement strategies to resolve the discrepancies.

A.36 PURCHASING COOPERATIVE

It is the intent of this RFQ to include requirements and to obtain proposals on behalf of Manatee County Government. Further it authorizes entities belonging to the Sarasota Bay Area Chapter of NIGP to obtain goods and services utilizing the terms, conditions and pricing of this RFQ. This opportunity is also made available to all public agencies, pursuant to their own governing laws, and subject to the agreement of the supplier. The County will not be financially responsible for the purchases of other public agencies utilizing this RFQ and any resulting contract or purchase order.

A.37 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 Southeast Water Reclamation facility, 3331 Lena Road, Bradenton, FL 34211	July 23, 2020 10:00 am
Question and Clarification Deadline	July 31, 2020
Final Addendum Posted	August 4, 2020
Proposal Due Date and Time	August 13, 2020, by 3:00 p.m.
Technical Evaluation Meeting	August 27, 2020
Technical Evaluation Meeting	August 28, 2020
Interviews/Presentations/Demonstrations (if conducted)	September 4, 2020
Final Evaluation Meeting (if required)	September 8, 2020
Projected Award	October 2020

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 rank 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.

Criteria	Weight
Proposer & Team's Experience	25%
Approach to Design and Construction	25%
Organizational Structure and Capacity	20%
Similar Completed Projects	20%
Interviews	10%

B.03 CLARIFICATIONS, INTERVIEWS, PRESENTATIONS, DEMONSTRATIONS

As part of the evaluation process the evaluation committee 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 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). 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.

The evaluation committee may final rank Proposals without conducting clarifications, interviews, presentations, or demonstrations. Therefore, each Proposer must ensure that its Proposal reflects Proposer's best offer, given its understanding of the requirements at the time of submission.

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 ranked Proposer. If the County and the highest-ranked 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-ranked 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 Attachment E, Sample Agreement). The County (as Owner) will execute this Agreement with the successful Proposer (as Contractor).

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:
Addendum No. _____	Date Received:
Addendum No. _____	Date Received:
Addendum No. _____	Date Received:
Addendum No. _____	Date Received:
Addendum No. _____	Date Received:
Addendum No. _____	Date Received:
Addendum No. _____	Date Received:
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

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 Attachment E. 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

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.

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

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:_____

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

FORM 8, EXHIBIT D, 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:

- \$1,000,000 Combined Single Limit; OR
- \$ 500,000 Bodily Injury and \$500,000 Property Damage
- \$10,000 Personal Injury Protection (No Fault)
- \$500,000 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:

- \$1,000,000 Single Limit Per Occurrence
- \$2,000,000 Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal and Advertising Injury Liability
- \$50,000 Fire Damage Liability
- \$10,000 Medical Expense, and
- \$1,000,000, Third Party Property Damage
- \$ 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:

- \$100,000 Each Accident
- \$500,000 Disease Each Employee
- \$500,000 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:

- \$ 1,000,000 Bodily Injury and Property Damage Each Occurrence
- \$ 2,000,000 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 \$_____ or ____% 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 \$_____ or ____% 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. The enclosed Hold Harmless Agreement shall be signed by the Successful Proposer and shall become a part of the contract.
12. 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.
13. No award shall be made until the Procurement Division has received the Certificate of Insurance and Hold Harmless Agreement 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. 20-TA003403CD

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 signed statement 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

SECTION E ATTACHMENTS

Attachment A, Scope of Services- Design Criteria

Attachment B, Proposal Requirements

Attachment C, SCADA Master Plan (Uploaded to County website as a separate document for download)

Attachment D, Record Drawings (Uploaded to County website as a separate document for download)

Attachment E, Sample Agreement

ATTACHMENT A

SCOPE OF SERVICES - DESIGN CRITERIA PACKAGE

A.01 GENERAL INFORMATION AND BACKGROUND

In 2017 the County received a Water Reclamation Facilities (WRF) Master Plan which included a capacity analysis of the hydraulics and biological processes of each of the County's WRF's. Findings from the master plan for the Southeast WRF (SEWRF) concluded that the existing filter treatment capacity was inadequate based on the peak hourly design flow and Class I reliability standards. Upgrading to cloth media filters will address the filter capacity issues without affecting the existing footprint.

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 location:

Southeast Water Reclamation facility (SEWRF)
3331 Lena Road, Bradenton, Florida

This project is for site work, architectural, 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: SEWRF Cloth Media Automatic Backwash Filters

A.02 SCOPE (MAJOR OBJECTIVES)

The Design-Build team shall provide the following, which are further described in sections below:

1. Replacement of Automatic Backwash (ABW) Filters #3 and #4 with new cloth media filters.
2. System modifications to address the different flow patterns expected with the cloth media filters.
3. Rehabilitation of Filter Blower Building #4 including other equipment/controls along with the adjacent plant drain pump station, and dewatering slab.
4. Provide electrical controls and SCADA integration following County standards (See the SCADA Master Plan in Attachment C).
5. Obtain Florida Department Environmental Protection (FDEP) and all other required permits for the proposed work and certified complete.
6. Rehabilitate the existing filter reinforced concrete structures (Filters #3 and #4) to best accommodate the cloth media filter system, including both a roof/filter cover and a crane for equipment removal.
7. Demolition will include the removal and disposal of the existing filter media and other internal piping, filter equipment, and electrical components (See Attachment D for

record drawings). O&M manuals for the existing ABW Filters will be provided to the successful Design-Build team.

8. Provide a project schedule that will include considerations for plant flows, other facility projects ongoing, and equipment fabrication and delivery requirements.
9. Construction sequencing such that only one filter is offline at any point in time.
10. Coordination and collaboration with County staff to include site visits to facilities that are similar to the County's project and how to address issues that may have happened at other similar facilities including potential solutions.
11. Coordination of periodic inspections by the cloth media filter manufacturer's representative during construction progress to ensure compliance with their standards.
12. Coordination with County operations staff for opening and closing of valves and also determining if plant impacts proposed to facilitate the project are adequate.
13. Operator training on the new cloth filters.

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.

A.03 GENERAL REQUIREMENTS

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

A.04 PLANT BACKGROUND, CONSTRAINTS, AND STANDARDS

Plant Background

The SEWRF is located in southeastern Manatee County at 3331 Lena Road in Bradenton, Florida, and has a permitted capacity of 11.0 mgd Three Month Rolling Average Daily Flow (TMRADF) under FDEP Wastewater Permit No. FLA012618. The treatment process at the SEWRF consists of preliminary screening and grit removal, secondary biological nutrient removal (BNR) activated sludge, and tertiary filtration and high-level disinfection.

From the secondary clarifiers, effluent flows to flash mix basins, flocculation tanks, and granular media traveling bridge ABW filters for tertiary treatment.

Existing ABW filters are Aqua-Aerobic (Filters 1 and 2) and EIMCO/Ovivo (Filters 3 and 4), traveling bridge. Filters 3 and 4 were constructed in 2002. Filter media consists of 1-ft of anthracite and 1-ft of sand. Filter surface areas are approximately 1440 ft² with a design loading rate of 2gpm/ft². The traveling bridge assembly travels on rails and has a festoon assembly for power and communications. The filter operates with a submersible backwash pump in the filter effluent channel that backwashes individual cassettes as the traveling bridge assembly moves along the length of the filter. A backwash waste pump is mounted to the bottom of the

traveling bridge and conveys backwash waste to a fiberglass backwash waste channel that is mounted to the wall that conveys the waste to the waste channel at the end of the filter structure. Blowers in a nearby building supply air for air scour during backwash. An influent weir controls flow to the filters and a pea gravel and nozzles underdrain system is used to convey filter effluent to chlorine contact tanks (See Attachment D for more information).

Site Conditions and Constraints

ABW Filters #3 and #4 are located along the south side of the site, centered between the east and west sides of the property (see yard Piping Plan in Attachment D –Record Drawings). It is bound by the chlorine contact chambers to the west, secondary clarifiers to the east, plant drain station and blower building to the south, and a road and return lake filters to the north. Construction of the new cloth filters will need to fit within the existing ABW filter bays. Construction staging and material storage are adequate across the street to the south, adjacent to the ground storage tank. For other projects, the lay area between the north road of the plant and the reject storage pond has been used; however, this space may be reserved for other ongoing projects. The lay and staging area for construction should be coordinated with the County and plant staff.

Maintenance of flows is required during construction and bypass pumping is not ideal for an extended time. Bypass pumping would be required to send excess flows from the other filters to the reject storage pond. Depending on the length of time bypass is active, the reject storage volume during a reject event could be limited. Close attention will need to be paid with the sequence of construction of the new filters while maintaining capacity with the other online filters. Only one ABW being replaced will be out of service at one time.

CODES AND STANDARDS

The SEWRF is regulated through FDEP, which primarily deals with the quality of effluent discharged from the facilities, disposal of biosolids generated by the facilities, and the nature of waste material in the collection facilities. Also, the County is issued a combined Master Reuse System permit (FDEP Permit No. FLA474029). The existing permit expires in December of 2022.

Relevant regulatory codes and standards that govern the operation and design of the facility include but are not limited to:

- Florida Administrative Code (F.A.C)
 - Chapter 62-600 (Domestic Wastewater Facilities)
 - Chapter 62-610 (Reuse of reclaimed Water and Land Application)
 - Chapter 62-640 (Biosolids)
 - Chapter 62-650 (Water Quality Based Effluent Limitations)
- Nitrogen Reasonable Assurance
 - Per the EPA's TMDL for Tampa Bay and as a part of the Tampa Bay Nitrogen Management Consortium (NMC), the County voluntarily caps nitrogen loads to annual average levels recorded in 2003-2007.
- National Fire Protection Association (NFPA)

- 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:
 - Florida Building Code: Building.
 - Florida Building Code: Existing Building.
 - Florida Building Code: Accessibility.
 - Florida Building Code: Test Protocols for High-Velocity Hurricane Zones.
 - Florida Building Code: Energy Conservation.
 - Florida Fire Prevention Code.
 - Florida Building Code: Fuel Gas.
 - Florida Building Code: Mechanical.
 - Florida Building Code: Plumbing.

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).

A.05 PROCESS DESIGN CRITERIA

Influent Flow Requirements

The SEWRF design capacity is 11 mgd, TMRADF, and 27.5 peak hour flow (PHF). Table 1 outlines the influent flow design capacities as well as design influent parameters for the plant.

Table 1: Existing Influent Design Criteria

Parameter	Units	Value
Flow, TMRADF	mgd	11.0
Flow, MDF	mgd	12.65
Flow, PHF	mgd	27.5
cBOD ₅	mg/L	250
cBOD ₅ (at TMRADF)	lb/d	22,940
TSS	mg/L	250
TSS (at TMRADF)	lb/d	22,940
TKN	mg N/L	40
TKN (at TMRADF)	lb/d	3,670

Water Quality Requirements

The effluent discharge limits are listed in the FDEP permit for the facility and govern the minimum effluent quality standards for discharge to the Manatee County Master Reuse System (MCMRS). They are outlined in Table 2. Filters shall perform to provide water quality requirements as dictated by the effluent discharge requirements for TSS, which is 5 mg/L or less.

Table 2: Master Reuse Distribution System Permit Limits (R-001)

Parameter	Units	Max/Min	Annual Average	Monthly Average	Weekly Average	Single Sample
Flow	mgd	Maximum	11.0	-	-	-
cBOD ₅	mg/L	Maximum	20.0	30.0	45.0	60.0
TSS	mg/L	Maximum	-	-	-	5.0
pH	std. units	Range	-	-	-	6.0-8.5
Fecal coliform	% < detection	Minimum	-	75	-	-
Fecal coliform	#/ 100 mL	Maximum	-	-	-	25
Total Residual Chlorine	mg/L	Minimum	-	-	-	1.0
Total Nitrogen (as N)	mg N/L	Maximum	-	-	-	Report

Filter design criteria

Manatee County completed a similar rehabilitation project at the Southwest Water Reclamation Facility where one ABW filter was replaced with a cloth filter. The cloth filter was retrofitted into the ABW filter and increased the filtration capacity of the plant. Table 3 outlines minimum filter characteristics and performance parameters that the SEWRF filter achieved and will be required for the new filters at SEWRF.

Table 3: New Filter Characteristics

Criteria	Description
Number	2
Type	Gravity Flow
Media Type	Cloth
Filter Loading at Average Design Flow	6.5 gpm/ ft ²

The overall PHF design capacity of the existing filters is 16.6 mgd, which is below the 2035 PHF capacity of 29.87 mgd. Class I reliability requires the filters to treat 75 percent of the PHF with the largest unit out of service, which is 22.4 mgd at SEWRF. The existing ABW filters provide only 42 percent of the SEWRF PHF capacity when one unit is out of service. New filters will be

sized, and design coordinated by the Design-Build team to replace two ABW filters with cloth filters that can treat the flow conditions mentioned with class I reliability standards. Table 4 outlines the design criteria of the existing filters, two of which will be replaced.

Table 4: Existing Filter Characteristics

Criteria	Description
Number	4
Type	Automatic backwash, traveling bridge (Sand)
Surface Area, each	1,440 ft ²
Surface Area, total	5,760 ft ²
Peak Loading Rate ⁽¹⁾	2.0 gpm/ ft ²
PHF capacity, total	16.6 mgd
PHF capacity, Class I reliability ⁽²⁾	12.4 mgd
Filter Effluent Quality	3.5 NTU ⁽³⁾

1. Maximum loading rate allowed by 10 State Standards is 5.0 gpm/sq ft, but 2.0 gpm/sq ft was assumed based on knowledge of similar ABW filters operating in the state of FL. Actual achievable loading rates may vary from the assumed value.
2. Class I reliability requires 75% of peak flow treatment capacity with the largest unit out of service. The existing filters provide only 42% of peak capacity is provided when it is out of service.
3. Operational set point for reject water.

Owner Preferences

Controls Standards

The County has no written standards currently in place regarding the control and communication systems. Despite this; however, the County aims to have consistency across its wastewater facilities for SCADA, PLCs, and related software and hardware for instrumentation, communications, and electronics. For this project, any new control systems or communications shall be compatible and integrated into the County's existing SCADA system. New hardware will be consistent with what is being installed at the SEWRF as well as the other County wastewater facilities. Coordination with the County instrumentation and electrical staff will be needed to identify the unofficial, standardized hardware that should be used. A SCADA Master Plan is currently pending completion and shall be used as a reference in conjunction with communication with the County staff (See Attachment C for the SCADA Master Plan). At a minimum, the control and communications implemented shall provide adequate security and allow access to data about the operation of the equipment. Reported data shall include and not be limited to influent and effluent flow rates, turbidity, as well as backwash pressure monitoring.

Ancillary Equipment Preference

Similar to the approach for SCADA and instrumentation, ancillary equipment to the filters shall be consistent where possible with equipment used in the SEWRF, as well as the other County's WRFs so the County can leverage available spare parts, staff experience, and troubleshooting measures as much as possible. Coordination with The County may be required; however, the recently implemented Computerized Maintenance Management System (CMMS) and electronic operations and maintenance (EOM) site may be available to the Contractor to facilitate information gathering on existing equipment.

A.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.

A.07 ESTIMATED PROJECT COMPLETION DATE

The estimated project completion schedule is 21 months from the project design kick-off meeting.

A.08 ESTIMATED PROJECT COST

The County has budgeted the project design and construction cost at approximately \$5.5 million, which includes design, construction (including Sitework) and soft costs.

End of Attachment A

ATTACHMENT B, 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 C, Evaluation of Responses.

B.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.

B.02 RESPONSE FORMAT

A. 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.

B. 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 and/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 SEWRF Cloth Media Automatic Backwash Filters.

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; or**

d. Certified under Section 481.319, Florida Statutes, to practice or to offer to practice landscape architecture.

3. Proposer or its subcontractor have completed (which means that certificate of occupancy has been issued) a minimum of three (3) cloth media automatic backwash filter projects at a water reclamation facility since 2010. The three (3) qualifying projects could have been constructed using either design-bid-build, construction manager at risk, or design-build methods, so long as the architect/engineer or the contractor for those three qualifying projects are part of the Proposer's design-build team. Provide the following information for each qualifying project.
 - 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. If Proposer is not a joint venture, provide a statement to that effect.

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

Disclose the name of any officer, director or agent who is also an employee of the County. Disclose the name of any County employee who owns, directly or indirectly,

any interest in the Proposer's firm or any of its branches. If no conflicts of interests are present, Proposer must submit a statement to that affect.

C. 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

D. TAB 4 - TRADE SECRETS

Pursuant to Section A.24, 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.

E. TAB 5 - PROPOSER STATEMENT OF ORGANIZATION (Limit 5 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.
 - i. Address
 - ii. County, State, Zip
 - iii. Phone
 - iv. 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:
 - i. Name
 - ii. Phone
 - iii. E-mail
 - iv. Mailing Address
 - v. 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).

F. TAB 6 – RESPONDENT AND TEAM'S EXPERIENCE (Limit 20 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. Provide Proposer's years of experience in design-build projects for automatic backwash filters in a waste water facility.
4. 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.
5. 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 waste water facilities.
6. 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 waste water facilities.
7. 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.
8. Describe any significant or unique accomplishments, recognition, or awards received by Proposer, its key personnel, or its subcontractors for previous similar services.
9. Provide a minimum of five client references for design or construction work performed by Proposer, 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

G. TAB 7 – APPROACH (Limit 14 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 21 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.

H. TAB 8 - ORGANIZATIONAL STRUCTURE AND CAPACITY (Limit 12 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 July 2018. Include the following information for each:
 - i. Name of the project.
 - ii. Date of award.
 - iii. Dollar value of the design work.
 13. Provide details of Proposer's capacity to bond the project. Include a letter of intent form

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.

I. TAB 9 - SIMILAR COMPLETED PROJECTS (Limit 10 pages)

Provide a list of up to five design-build projects, particularly those of automatic backwash filters in a waste water facility, which Proposer has provided successfully completed since 2010. 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 ATTACHMENT B

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. 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 of 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 proposal:
- (3) Phased completion dates:
- (4) Substantial completion dates:
- (5) Final milestone dates:

F. Architect/Engineer, Consultants and Contractors. The Owner requires the Design-Builder 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.)

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.

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, 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 provisions set forth in Article XIV.

Q. Instruments of Service: Instruments of Service are representations, in any medium of expression 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 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 improvement 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 hereto 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 not 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) Televised data and communication services, teleconferences, Project web sites, and e-mails;
- (3) Fees paid for securing approval of authorities having jurisdiction over the Project;
- (4) Printing, reproductions, plots, standard form documents;
- (5) Staging, 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 these 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 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 Consultant, 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 certification relate, 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 certification or certifications that would require knowledge, services or responsibilities beyond the scope of their services.

M. Design-BUILDER's Submittals.

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 provide 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 defects 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 (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Design-Builder, 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 not identified hereafter. 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) In claims against any person or entity indemnified under this Section 3.1.P, 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.

- (3) 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.

- (4) 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 Section 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 obligations of the successor design-builder's or other entity's obligations under this agreement.

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 Design-Builder, 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 Recommendation. The Design-Builder shall advise the Owner on proposed site use and improvement, 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, construction 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. Submission. 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) sections 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 exceptions, 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

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 objections. 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 substituting 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 same as 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 Use. 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 those 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 sound 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 that involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall 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 attributable 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 and 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 to 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 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 dictated 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 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-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineer 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 water 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 or 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 person or entity 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 9.1.

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 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 a 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 a change 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 of 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 notifications 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.

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 payable. 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 supplier, 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, retaining 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 payment 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, 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 society, 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 status of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

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, manufacturers' 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, 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 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 encroachment 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 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 handling 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.

F. Emergency. 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 to 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 obligation 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 nonconformance. 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 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 employees 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 X 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.

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 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 represents and warrants 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 with respect to the Design-Builder, or to the Design-Builder, if with respect to the Owner, specifying its usual 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; Action 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 good 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), 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 of 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 extent 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 the 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 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 state 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, 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 Constructive Change Order shall be issued. Design-Builder shall further bear the responsibility of 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 deficiencies 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 a design-Build 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 in 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 may 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 16.2.A(1) 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).

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 agreement pursuant to Section 16.2.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 Contract 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 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 17.05 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 recover 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 8.05 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, existing 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 any 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, profits, 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 amended or 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, appeals, waivers, and elections shall be deemed given when received by the party for which 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.SCACCIAOCE@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

**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
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 to Owner for 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)
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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. 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 identifiers 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)
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- 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 (exceed) progress payments already received by the Design-Builder, less (2) the 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 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 ten percent (10%). Pending final determination of costs to the Owner for changes in the Work, amounts not in dispute shall be included as provided in Section 9.5 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 valid receipts, less retainage of ten percent (10%);
- .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 Document, the amount of each progress payment shall be computed as follows:
 - .1 Take the Cost of the Work as described in Section 1.5.C(1) above;
 - .2 Add the Design-Builder's Fee, less retainage of ten percent (10%). 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 the 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 ten percent (10%) 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 uncovered 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 ten percent (10%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the amount indicated 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;

Subtract retainage of ten percent (10%) from that portion of the Work that the Design-Builder self-performs;

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 shall reduce to five percent (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 its 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 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
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A. The Supplemental and Other Conditions of the Contract:

Document	Title	Date	Pages
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B. The Specifications:
(Either list the specifications here or refer to an exhibit to this Amendment.)

Section	Title	Date	Pages
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C. The Drawings:
(Either list the drawings here or refer to an exhibit to this Amendment.)

Number	Title	Date
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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

Page

E. Other identifying information:

F. Allowances and Contingencies

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

.2 Contingencies

G. Design-Builder's assumptions and clarifications:

H. Deviation from the Owner's Criteria as adjusted by a Modification:

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 rate at which their time will be charged to the Work.)

Person included: _____ (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, 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 and 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 non-conforming 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 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 set to the Guaranteed Maximum Price. If such royalties, fees and costs are included 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 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 included 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 provision so that they can be obtained.
- B. Discounts 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. All such 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 entries, 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.

HEREBY, the parties hereto have entered into this Amendment as of the date last executed.

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