

## **DESIGN-BUILD AGREEMENT**

LEE COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the "County"), hereby contracts with INSERT NAME (the "Design-Build Firm") of INSERT DESIGN-BUILD FIRM'S ADDRESS, whose federal tax identification number is INSERT DESIGN-BUILD FIRM'S FEID, a INSERT DESIGN BUILD-FIRM'S STATE (FLORIDA, DELAWARE, ETC.) design-build firm licensed and authorized to perform all Work in the State of Florida in connection with the County's Solicitation No. INSERT SOLICITATION NO. (the "Project")., as said Work is set forth in the Plans and Specifications furnished by the Design-Build Firm and other Contract Documents hereafter specified.

### **SECTION 1. DEFINITIONS**

Wherever used in the Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. *Agreement* – The written contract between the County and Design-Build Firm covering the Work and other Contract Documents that are attached to or referred to in the Agreement, including the Construction Phase Amendment and any other amendments to this Agreement. All such documents shall be deemed to be a part of the Agreement for all purposes.

2. *Architect and Engineer* – A duly licensed individual or entity designated by Design-Build Firm to perform or furnish specified professional engineering or architectural services, as applicable, in connection with the Work.

3. *Bond* – Performance and Payment Bond and other instruments of security.

4. *Change Order* – A written order to the Design-Build Firm signed by the County, issued after execution of the Agreement, authorizing a change in the Work or an adjustment in the Contract Amount or the Contract Time. The Contract Amount and the Contract Time may be changed only by a Change Order. A Change Order signed by the Design-Build Firm indicates its agreement therewith, including the adjustment in the Contract Amount or the Contract Time.

5. *Construction* – The process of performing the Work and the final end product of that process. This term may also refer to portions of the final end product. The terms construct and constructing and other similar variations of those terms also refer to Construction as defined herein. The term Construction shall not be deemed to include the performance of professional engineering or architectural design services.

6. *Construction Phase Amendment* – An amendment to this Agreement to add Construction to Design-Build Firm's Work and the amount of the Construction Phase Fee for the Project.

7. *Construction Phase Fee* – The compensation to be paid to the Design-Build Firm during the Construction Phase and includes:

7.1 Salaries or other compensation of the Design-Build Firm's employees assigned to the project at its principal office and branch offices.

7.2 The Design-Build Firm's personnel assigned during the Construction Phase, their duties, and responsibilities to this Project, and the duration of their assignments are shown on Exhibit I. Such personnel shall not be replaced without prior written consent of the County, which shall not be unreasonably withheld.

7.3 General operating expenses related to this Project of the Design-Build Firm's principal and branch offices.

7.4 The costs of all data processing staff.

7.5 Salaries or other compensation of the Design-Build Firm's employees assigned to the project at the job-site. The Design-Build Firm's personnel to be assigned to the Site during the Construction Phase under the job-site management and supervision fee, their duties, responsibilities, and the duration of their assignments are shown on Exhibit I.

7.6 General operating expenses incurred in the management and supervision of the Project, except direct costs, defined as Direct Costs to the Project and as defined in Paragraph 26 below.

7.7 Job office supplies including paper, pencils, paper clips, file folders, staples, etc., and janitorial supplies (photo copy or blue print paper not included).

7.8 The costs resulting from the services provided by the Architects and Engineers during the Construction Phase.

7.9 Profit.

8. *Contract Amount* – The amount specified in Section 4 of the Agreement. The Contract Amount may be changed from time to time pursuant to the terms and conditions of this Agreement.

9. *Contract Documents* – The documents as are listed under Section 2 of the Agreement.

10. *Contract Time* – The time stated in the approved Project Schedule to achieve Substantial Completion, and to finally complete the Work so that it is ready for final payment in accordance with the terms of this Agreement.

11. *County's Representative* – A person designated to act as County's Representative with respect to Design-Build Firm's performance of the Work. Such person shall have complete authority to transmit instructions, receive information, interpret and define County's policies, and make decisions with respect to performance of the Work.

12. *Defective* – An adjective which when modifying the terms Construction or Work refers to Construction or Work that is delayed, unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to County's final payment (unless responsibility for the protection thereof has been assumed by County as of the time of damage pursuant to the terms and conditions of the Contract Documents).

13. *Design-Build Firm* – The individual or entity with whom County has entered into the Agreement as indicated in the Agreement.

14. *Design Criteria Package* – The Drawings and Specifications and/or other graphic or written materials, criteria and information concerning County's requirements for the Project, such as design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, which show or describe the character and scope of, or relate to, the Work to be performed or furnished and which have been prepared by or for County. The Design Criteria Package is attached hereto as Exhibit G.

15. *Design Phase Fee* – The compensation to be paid to the Design-Build Firm for services performed during the Design Phase includes:

15.1 Salaries or other compensation of the Design-Build Firm's employees for services provided.

15.2 The costs resulting from the services provided by the Architects and Engineers during the Design Phase.

15.3 Costs of other services directly related to the Project.

16. *Direct Costs to the Project* –

16.1 Wages paid for labor (as opposed to wages paid for management or supervisory personnel) in the direct employ of Design-Build Firm in the performance of the Work and the associated overhead per this agreement.

16.2 Cost of all materials, supplies, and equipment incorporated in the Project, including cost of transportation and storage thereof.

16.3 Payments to Subcontractors for performance of services required in the Construction of the Project.

16.4 Costs, including maintenance and transportation of all equipment, temporary facilities and hand tools not owned by the Design-Build Firm, which are employed or consumed in the performance of the Work.

16.5 Rental charges on all necessary machinery and equipment, exclusive of hand tools, used at the Project Site and required for performance of the Work.

16.6 Premium costs for all insurance and all bonds that the Design-Build Firm is required to procure per this agreement.

16.7 Taxes, sales, use gross receipts or similar taxes related to allowable direct costs to the Project.

16.8 Minor expenses at the Site to be billed at cost, i.e., postage, telephone service, and similar petty cash items required by the Project.

16.9 Costs for trash and debris control and removal from the Site.

16.10 Costs incurred due to an emergency affecting the safety of persons or property at the Site.

16.11 Costs for temporary facilities during Construction as required by the Project.

16.12 Costs for the required number of Record Drawings to be provided to the County upon completion of the Work.

16.13 Builder's Contingency. A sum shall be included in the Construction Contingency fee to protect the Work in the event of an uncompensated loss. The County must consent to all uses of this sum. In the event this sum is not needed, it shall be returned to the County at the time of Final Completion.

16.14 County's Contingency, which shall be defined as a sum of money owned by and under the control of the County for use as deemed necessary by the County for the Work.

17. *Drawings* – Those portions of the Contract Documents prepared by or for Design-Build Firm and approved by County consisting of drawings, diagrams, illustrations, schedules and other data which show the scope, extent, and character of the Work.

18. *Effective Date of the Agreement* – The date the Lee County Board of County Commissioners awarded the Solicitation to the Design-Build Firm.

19. *Final Completion* – The time at which all Construction and all Work has been fully, finally, and properly completed in accordance with the Contract Documents and all other duties, responsibilities, and obligations have been performed, as verified by the County with tests, inspections, or otherwise, so as to entitle the Design-Build Firm to submit a Bill or Invoice for final payment in accordance with the terms of this Agreement. Final Completion occurs when the Project is accepted by the County as evidenced by a letter of Final Completion signed by the County's Representative, the Design-Build Firm and the County. The terms "finally complete" and "finally completed" also refer to Final Completion.

**Commented [IB1]:** Change this to a different date if the date is different than the date the Solicitation was awarded by the Board. To do so, replace everything past the hyphen with "The effective date shall be \_\_\_\_\_."

20. *Guaranteed Maximum Price (GMP)* – The total maximum cost to the County for the Work performed by the Design-Build Firm including the Design Phase Fee, the Construction Phase Fee, Profit, and the Direct Costs.

21. *Invoice or Bill* – The form which is to be used by Design-Build Firm in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

22. *Laws and Regulations* – Any and all applicable laws rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

23. *Liquidated Damages* – Damages, usually in the form of monetary payment, agreed to by the parties to a contract which are due and payable as damages in the event of a breach of all or part of such contract. Liquidated Damages may be applied on a daily basis for as long as the breach is in effect.

24. *Notice to Proceed* – A written notice given by County to Design-Build Firm authorizing the Work to begin and fixing the date on which the Contract Time will commence to run.

25. *Profit* - The compensation paid to the Design-Build Firm for the profit and general expenses as negotiated and agreed upon by the County, related to the Construction phase of the Project, except those expenses expressly included in the Direct Costs of the Project and included in Section 5(B). Payment shall be made proportionally to the ratio of the cost of the Work in place, and less retainage, as it bears on the GMP. The balance of the Profit shall be paid when Construction of the Project is finally completed.

26. *Project* – The entire undertaking of the County, identified by County as indicated in the Exhibits of the Agreement, of which the Construction to be provided under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

27. *Record Drawings* – The certified Record Drawings from the Design Professional. A revised set of Drawings that reflect all changes made in the Specifications and Drawings during the Construction process.

28. *Schedule of Values* – A schedule, prepared by Design-Build Firm and accepted by County, which divides the Work into various major components, units, or divisions and which assigns a portion of the Contract Price to each of such components, units or divisions.

29. *Shop Drawings* – Diagrams, schedules, drawings, and other types of data prepared specifically by the Design-Build Firm, and requiring review from the County's Representative, to demonstrate how the Work will be implemented by the Design-Build Firm.

30. *Site* – The real property or other areas designated in the Contract Documents as being furnished by County for the performance of the Construction, storage, or access.

31. *Specifications* – Those portions of the Contract Documents which are organized into divisions, sections, and articles pertaining to, but not limited to, materials, style, workmanship, fabrication, dimensions, colors, warranties, finishes, quality, manufacturer, grade and operational data of all components to be provided by the Design-Build Firm as applied to the Construction and incorporated into the Project with certain administrative details applicable thereto.

32. *Subcontractor* – A person, firm, partnership, corporation, or entity who has a direct contract with the Design-Build Firm to perform any of the Work at the Site. The term Subcontractor does not include those whose sole purpose is that of a Supplier of materials, but a Supplier of materials shall be classified as a Subcontractor if it enters into any agreement, whether written or verbal, for the installation of said materials. The term Subcontractor means a Subcontractor or its authorized representative.

33. *Submittal* – A written or graphic document prepared by or for Design-Build Firm which is required by the Contract Documents to be submitted to County by Design-Build Firm. Submittals may include, but are not necessarily limited to Drawings, Specifications, progress schedules, Shop Drawings, samples, cash flow projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents.

34. *Substantial Completion* – The time at which the Construction has progressed and the Work has been completed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction can be effectively and efficiently utilized for the purposes for which it is intended without any material impairment of function for a pre-described period of time. If applicable, a temporary certificate of occupancy or compliance issued by the building official is required concurrent with or prior to issuance of a certificate of Substantial Completion. The terms “substantially complete” and “substantially completed” refer to Substantial Completion. The term Substantial Completion may be used in the Contract Documents in reference to a particular portion of the Construction, in which case the term will be applied as defined above only to that portion of the Construction, otherwise it shall be deemed to refer to the total Construction.

35. *Supplementary Conditions* – The part of the Contract Documents which amends or supplements the General Terms and Conditions, including any conditions imposed by a grant funding agency.

36. *Supplier* – A manufacturer, fabricator, distributor, materialmen or vendor.

37. *Surety* – The surety company or individual that is bound by contract bond with and for the Design-Build Firm who is primarily liable, and is responsible for Design-Build Firm’s acceptable performance of the Project and payment of all debts pertaining to the Contract Documents in accordance with Section 255.05, Florida Statutes.

38. *Work* – All labor, materials, equipment and incidentals required to fully, finally and properly complete the Construction and otherwise fully, finally and properly comply with all terms and conditions of the Contract Documents.

## **SECTION 2. CONTRACT DOCUMENTS**

A. The Contract Documents consist of this Agreement, the Exhibits described in Section 8 hereof, the legal advertisement, the instructions to bidders, the solicitation and any duly executed and issued addenda, Change Orders, Field Directive Change Orders, Work authorizations and amendments relating thereto, including the Construction Phase Amendment. All of the foregoing Contract Documents are incorporated by reference and made a part of this Agreement with the exception of the solicitation which shall be incorporated to the extent that it does not conflict with the remainder of the Agreement (all of said documents, including this Agreement, sometimes being referred to herein as the "Contract Documents" and sometimes as the "Agreement"). A copy of the Contract Documents shall be maintained by the Design-Build Firm at the Project Site at all times during the performance of the Work.

B. Any Work that may be reasonably inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. In case of any inconsistency or conflict among the provisions of the Agreement and any other terms and conditions of any documents comprising the Contract Documents, the provisions of the Agreement shall control. Concerning the Contract Documents, the order of precedence shall be as follows: (1) Change Orders; (2) the Agreement, including amendments and Exhibits; (3) Field Directive Change Orders; (4) the solicitation documents, including any addenda. The Contract Documents listed above represent the entire and integrated Agreement between the parties hereto, and supersede prior negotiations, representations, or agreements, either written or oral.

C. Work, materials or equipment described in words which have a well-known technical or trade meaning, shall be deemed to refer to such recognized standards.

D. County shall furnish to the Design-Build Firm up to two (2) sets of the Contract Documents for execution of the Work. Additional copies of the Contract Documents shall be furnished, upon request, at the cost of reproduction.

E. The Design-Build Firm agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the County.

F. Construction services provided by Design-Build Firm for the Project shall be under the general direction of County's Representative, or their successor, who shall act as the County's Representative during the term of this Agreement. If the County's Representative is not a County employee, then County's Representative is not authorized to issue changes to the Contract Amount, Contract Time, or Scope of Work without express approval by the Department Director, County Manager, or Board of County Commissioners.

G. The County's Representative, within the authority conferred by the Board of County Commissioners, shall initiate written Change Orders, and notification to the Design-Build Firm of any and all changes approved by the County in the Design-Build Firm's: (1) compensation; (2) time and/or schedule of service delivery; (3) and any amendment (s) or other change(s) relative to the Work pursuant to this Agreement or Change Orders pertaining thereto. Following County approval, the County's Representative shall coordinate issuance of any such documents. The County's Representative shall be responsible for acting on the County's behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement or any amendments, or Change Orders issued hereunder.

### **SECTION 3. SCOPE OF WORK**

A. Generally, the Design-Build Firm shall provide all planning, design, and architectural and engineering services required for the proper design and, upon the approval of the Construction Phase Amendment, for all other services necessary for the Construction of the Project (the "Work").

B. Design-Build Firm's Responsibility with Respect to Design.

1) In fulfilling its obligations under this Section, Design-Build Firm shall employ Architects and Engineers of the appropriate specialties for proper preparation of the Project Drawings and Specifications, including structural, mechanical, electrical, soils (excepting existing environmental contamination and based upon soil boring reports furnished to Design-Build Firm by County), civil and such other specialties as are reasonably required. All such professional services shall be performed by appropriately State of Florida licensed personnel. Design-Build Firm takes responsibility for the proper performance of such architectural and engineering services.

2) The Design-Build Firm shall prepare and the County shall approve a Design Phase schedule as follows:

(a) PHASE 1 - DESIGN DEVELOPMENT

In Accordance with the Design Criteria Package, the Design-Build Firm shall prepare design development documents to fix the size and character of the Project as to structural, mechanical and electrical systems, materials, and other appropriate essential items in the Project. These development documents shall be the basis for the design and Construction of the Project.

(b) PHASE 2 - WORKING DRAWINGS AND SPECIFICATIONS

From approved design development documents, the Design-Build Firm shall prepare working Drawings and Specifications setting forth, in detail, the requirements for the Construction of the Project, and based upon codes, laws, or regulations which have been enacted at the time of their preparation.



3) The Design-Build Firm and the County will work closely together to monitor the design in accordance with prior approvals so as to ensure that the Project can be constructed within the Contract Amount as defined in Section 4. As these working Drawings and Specifications are being completed, the Design-Build Firm will keep the County advised of the effects of any County requested changes on the Contract Time Schedule and/or the Guaranteed Maximum Price ("GMP"). Construction of the Project shall be in accordance with these Drawings and Specifications as approved by the County and incorporated in the Exhibits. The Drawings and Specifications shall remain the property of the County and may be used by the County on this or other projects without the written consent of the Design-Build Firm.

C. After the completion of the Design Phase as set forth above in Section 3.B., the County may elect, in its sole discretion, to not proceed with the Construction Phase of the Project. If the County elects to not proceed with the Construction Phase of the Project, the Construction Phase Amendment will not be approved and the County will pay the Design-Build Firm the proportionate amount owed for the percentage of Work performed at the time of termination.

D. Royalties and Patents.

1) The Design-Build Firm shall pay all royalties and license fees for materials, methods, and systems incorporated in the Work. It shall defend all suits or claims for infringement of any patent rights and shall save the County harmless from loss on account thereof except when a particular design process or product is specified by the County. In such case the Design-Build Firm shall be responsible for such loss only if it has reason to believe that the design, process, or product so specified is an infringement of a patent, and fails to give such information promptly to the County.

E. Warranties and Completion.

In addition to the warranty set forth in Section 20, General Terms and Conditions:

1) The Design-Build Firm shall secure required certificates of inspection, testing, or approval and deliver them to the County.

2) The Design-Build Firm shall collect all written warranties and equipment manuals and deliver them to the County.

3) The Design-Build Firm, with the assistance of the County's maintenance personnel, shall direct the commissioning of utilities and the operations of the Project's systems and equipment, and shall assist in their initial start-up and testing.

4) The Design-Build Firm shall secure the warranty-related responsibilities with a Warranty Bond in the amount of 10% of the GMP, provide a Warranty Bond in the form provided in Exhibit L. Warranty responsibilities are further detailed in Exhibit G.

#### **SECTION 4. CONTRACT AMOUNT**

In consideration of the faithful performance by Design-Build Firm of the covenants in this Agreement to the full satisfaction and acceptance of County, County agrees to pay, or cause to be paid, to Design-Build Firm, in accordance with the terms of this Agreement, the Design Phase Fee of \$\_\_\_\_\_ as well as the Construction Phase Fee Guaranteed Maximum Price (GMP), which shall be established by the Construction Phase Amendment.

#### **SECTION 5. DESIGN-BUILD FIRM FEES**

A. Design Phase Fee. The Design Phase Fee for the Project shall be paid in proportionate monthly payments for the percentage of Work performed that month. The first monthly payment shall become due thirty (30) days following the issuance by the County of the Notice To Proceed with the design services for the Project and monthly thereafter based on the project schedule and approval by County of deliverables as set forth in Exhibit H (Design Phase Fee Proposal).

The Design-Build Firm's design personnel to be assigned during the Design Phase Phases of the Work and their duties, responsibilities, and fee schedule, and the duration of their assignments are shown on Exhibit I, which is incorporated by reference herein. Such personnel shall not be replaced without the prior written consent of the County which shall not unreasonably withhold such consent.

B. Construction Phase Fee. Prior to commencement of the Construction Phase of the Project, the County and the Design-Build Firm will enter into the Construction Phase Amendment to authorize the Design-Build Firm to proceed with Construction of the Project and establish the Construction Phase Fee. The Construction Phase Fee shall be negotiated based on the design and the negotiated fee and supporting documentation shall be supplied to the County.

#### **SECTION 6. BOND**

A. Design-Build Firm shall provide a Performance and Payment Bond, in the form prescribed in Exhibit B, in the amount of one hundred percent (100%) of the Contract Amount, the costs of which to be paid by Design-Build Firm. If the Contract Amount is increased by a Change Order, it shall be the Design-Build Firm's responsibility to ensure that the Performance and Payment Bond is amended accordingly and a copy of the amendment recorded by the Lee County Clerk of Court and forwarded to the County. The Performance and Payment Bond shall be underwritten by a Surety authorized to do business in the State of Florida and otherwise acceptable to the County; provided, however, the Surety shall be rated as "A or better" as to general policy holders rating as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. and/or shall be approved by the County prior the issuance of such Bond, which approval shall not be unreasonably withheld.

B. Attorneys-in-fact who sign Bonds for County projects must file with such Bond a certified copy of their Power of Attorney to sign such Bond. All agents of Surety companies must list their name, address, and telephone number on all Bonds. The life of all Bonds provided to the County shall extend twelve (12) months beyond the date of final payment and shall contain a waiver of alternation to the terms of the Agreement, extensions of time and/or forbearance on the part of the County. The County shall not return or release the Bonds for a period of twelve (12) months after the date of final payment to allow time for claims against the Bonds during this period.

C. If the surety for any bond furnished by Design-Build Firm is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Design-Build Firm shall, within five (5) days thereafter, substitute another bond and surety, both of which shall be subject to the County's approval. Failure by the Design-Build Firm to maintain its bond in full force and effect at all times, including the warranty period, shall be grounds for termination of this Agreement.

C. Per Section 255.05, Florida Statutes, the Design-Build Firm shall be required to execute and record the Performance and Payment bond. The bond must state the name and principal business address of both the Principal and the Surety and a description of the Project sufficient to identify it.

#### **SECTION 7. CONTRACT TIME AND LIQUIDATED DAMAGES**

A. Time is of the essence in the performance of the Work under this Agreement. Design-Build Firm shall commence the Work within ten (10) days from the Commencement Date, established in each Phase's Notice to Proceed. No Work shall be performed at the Project Site prior to such Commencement Dates. Design-Build Firm shall provide forty-eight (48) hours' notice prior to beginning the Work. The Design Phase Work shall be completed within \_\_\_\_\_ ( ) days from the Commencement Date.

B. The Contract Time for the Construction Phase shall be established in the Construction Phase Amendment. The Contract Time shall be the time period from the Commencement Date in the Notice to Proceed for the Design Phase to the date of final completion of the Project.

C. County and Design-Build Firm recognize that, since time is of the essence for this Agreement, the County will suffer financial loss if the Work is not substantially completed within the time specified. Should Design-Build Firm fail to substantially complete the Work within the time period noted above for Substantial Completion, County shall be entitled to assess, as Liquidated Damages, but not as a penalty, a dollar amount established by the Construction Phase Amendment for each day thereafter until Substantial Completion is achieved. The Project shall be deemed to be Substantially Completed by the County on the date that the County's Representative certifies in writing that the Construction of the Project, or specified part thereof, is sufficiently completed in accordance with the Contract Documents, so that the Project or part can be utilized for the purposes for which it is intended. Along with such certification, the

County's Representative shall compile a "punch list" of any remaining exceptions that do not adversely affect the use of the Project. Completion of these items will be required prior to final payment as provided herein.

D. Design-Build Firm hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted Liquidated Damages as a penalty, which the parties agree represents a fair and reasonable estimate of the County's actual damages at the time of contracting if Design-Build Firm fails to substantially complete the Work in accordance with the progress schedule.

E. When any period of time is referred to by days herein, it shall be computed to exclude the first day and include the last day of such period. When the period of time is fewer than three (3) days, it shall mean business days as defined by Lee County. If the period of time is greater than three (3) days, then it shall mean calendar days. For any period of time greater than seven (7) days where the deadline falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline will fall to the next Monday or non-Lee County recognized holiday.

#### **SECTION 8. EXHIBITS INCORPORATED**

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement.

- Exhibit A: General Terms and Conditions
- Exhibit B: Example Form of Performance and Payment Bond (most recent version attached)
- Exhibit C: Insurance Requirements
- Exhibit D: Example Form of Release and Affidavit (most recent version attached)
- Exhibit E: Example Form of Change Order (most recent version attached)
- Exhibit F: Example Form of Owner Direct Purchases (most recent version attached)
- Exhibit G: Design Criteria Package
- Exhibit H: Design Phase Fee Proposal
- Exhibit I: Design-Build Firm Project Personnel Roster
- Exhibit J: Supplementary Conditions (including grant conditions if required)
- Exhibit K: Design-Build Firm Background Screening Affidavit
- Exhibit L: Warranty Bond Form

#### **SECTION 9. NOTICES**

A. All notices required or made pursuant to this Agreement by the Design-Build Firm to the County shall be in writing and delivered by hand or by United States Postal Service, first class mail, postage pre-paid, return receipt requested, or by courier, addressed to the following:

Dave Harner, II  
Lee County Manager  
P.O. Box 398  
Fort Myers, FL 33902

With copies addressed to each of the following:

[County Project Manager Name], Project Manager, P.O. Box 398,  
Fort Myers, FL 33902

Mary Tucker, Procurement Management Director, P.O. Box 398,  
Fort Myers, FL 33902

B. All notices required or made pursuant to this Agreement by the County to Design-Build Firm shall be made in writing and shall be emailed, delivered by hand or by United States Postal Service, first class mail, postage pre-paid, return receipt requested, or by courier, addressed to the following:

[Corporate Name of Design-Build Firm]

Attention: [Name of person with their title to whose attention the notice should be sent]

[Address (including city, state and zip)]

Telephone: [Telephone Number] Fax: [Fax Number] Email: [Email Address]

C. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

#### **SECTION 10. ANTI-DISCRIMINATION**

A. The Design-Build Firm for itself, its successors in interest, and assignees, as part of the consideration thereof covenant and agree that: (1) in the furnishing of services to the County hereunder, no person on the grounds of race, religion, color, age, sex, national origin, handicap or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (2) it shall not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, handicap or marital status.

B. The Design-Build Firm shall make affirmative efforts to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, handicap or marital status. Such action shall include, but not be limited to, acts of employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

C. Design-Build Firm agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this anti-discrimination clause.

D. Design-Build Firm shall provide all information and reports required by relevant regulations and/or applicable directives. In addition, the Design-Build Firm shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County to be pertinent to ascertain compliance. The Design-Build Firm shall maintain and make available relevant data showing the extent to which members of minority groups are beneficiaries under any contracts related to the Project.

E. Where any information required of the Design-Build Firm is in the exclusive possession of another who fails or refuses to furnish this information, the Design-Build Firm shall so certify to the County its efforts made toward obtaining said information. The Design-Build Firm shall remain obligated under this paragraph until the expiration of three (3) years after the termination of the Agreement.

F. In the event of breach of any of the above anti-discrimination covenants, the County shall have the right to impose sanctions as it may determine to be appropriate, including withholding payment to the Design-Build Firm or canceling, terminating the Agreement, in whole or in part. Additionally, the Design-Build Firm may be declared ineligible for further County contracts by rule, regulation or order of the Board of County Commissioners of Lee County, or as otherwise provided by law.

G. The Design-Build Firm shall send to each labor union or representative of workers with which the Design-Build Firm has a collective bargaining agreement or other contract of understanding, a notice informing the labor union or worker's representative of the Design-Build Firm's commitments under the Agreement, and shall post copies of the notice in conspicuous places available to the employees and the applicants for employment.

H. The Design-Build Firm shall include these Section 10 provisions in every sub-contract under the Agreement to ensure its provisions will be binding upon each Subcontractor. The Design-Build Firm shall take such action with respect to any Subcontractor, as the County may direct, as a means of enforcing such provisions, including sanctions for non-compliance.

**SECTION 11. FEDERAL AND STATE REQUIREMENTS**

In the event this Project is funded in whole or in part from any granting agency or source, the specific terms, regulations and requirements governing the disbursement of those funds are incorporated by reference and made a part of the Contract Documents. These conditions shall be made a part of the Supplementary Conditions.

**SECTION 12. MODIFICATION**

No modification or change to the Agreement shall be valid or binding upon the parties unless in writing and executed by the appropriate parties intended to be bound by it.

**SECTION 13. SUCCESSORS AND ASSIGNS**

Subject to other provisions hereof, the Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Agreement.

**SECTION 14. NO WAIVER**

The failure of the County to enforce, at any time or for any period of time, any one or more of the provisions of the Agreement shall not be construed to be, and shall not be, a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

**SECTION 15. ENTIRE AGREEMENT**

Each of the Parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, Work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Agreement.

**SECTION 16. SEVERABILITY**

Should any provision of the Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

**SECTION 17. SIGNATURE AUTHORIZATION ACKNOWLEDGEMENT**

Each individual signing this Agreement directly and expressly warrants that he/she has been given and has received and accepted authority to sign and execute the Agreement on behalf of the party for whom it is indicated he/she has signed, and further has been expressly given and received and accepted authority to enter into a binding agreement on behalf of such party with respect to the matters contained herein and as stated herein.

[Remainder of the page left intentionally blank.]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date(s) indicated below.

WITNESS:

**DESIGN-BUILD FIRM: [Name]**

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

ATTEST:

**OWNER: LEE COUNTY**

CLERK OF THE CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
Deputy Clerk

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

Print Name: \_\_\_\_\_

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

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

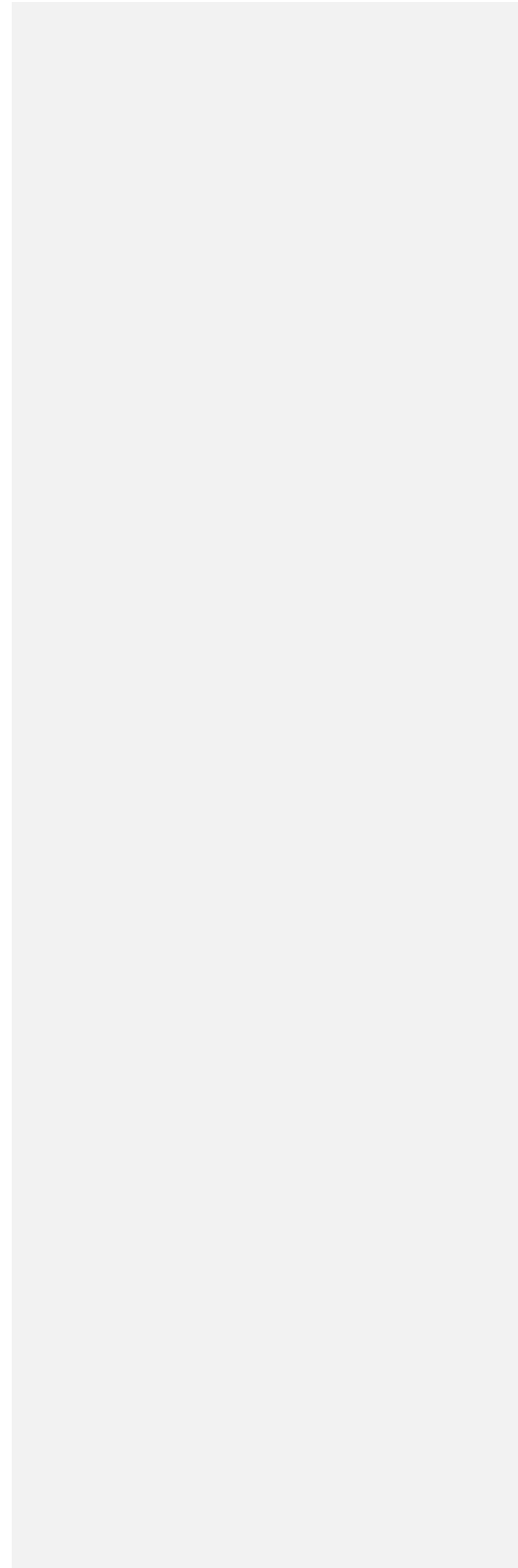
APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY:

BY: \_\_\_\_\_  
OFFICE OF THE COUNTY ATTORNEY



**EXHIBIT A**  
**GENERAL TERMS AND CONDITIONS**

DRAFT



## EXHIBIT "A"

### **GENERAL TERMS AND CONDITIONS**

#### **1. INTENT OF CONTRACT DOCUMENTS**

1.1. It is the intent of the Contract Documents to describe a functionally complete Project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the Laws or Regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, Law or Regulation in effect at the time the Work is performed, except as may be otherwise specifically stated herein.

1.2. If before or during the performance of the Work, Design-Build Firm discovers a conflict, error or discrepancy in the Contract Documents, Design-Build Firm immediately shall report same to County's Representative and County in writing and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from the Design-Build Firm's Architect or Engineer. If required and approved by the County, a Field Directive Change Order or Change Order will be issued pursuant to the terms of this Agreement. If the Design-Build Firm performs any Construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Design-Build Firm's Architect or Engineer and County, the Design-Build Firm shall assume responsibility for such performance and shall share in costs associated with any corrections. Design-Build Firm shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Design-Build Firm with the Contract Documents before commencing any portion of the Work.

1.3. Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as Shop Drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the Drawings, Specifications or other Contract Document provisions, Design-Build Firm shall be required to comply with the provision which is the more restrictive or stringent requirement upon the Design-Build Firm, as determined by the County's Representative. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

## **2. INVESTIGATION AND UTILITIES**

2.1. Design-Build Firm shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials; availability and quality of labor; water, sewer, and electric power; availability and condition of roads; Work area; living facilities; climatic conditions and seasons; physical conditions at the Project Site and the Project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Design-Build Firm to acquaint itself with any applicable conditions shall not relieve Design-Build Firm from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

2.2. Design-Build Firm shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project Site, said roadways, railways, drainage facilities and utilities (surface and subsurface) being referred to in this Section 2 as the "Utilities". Design-Build Firm shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the Construction of the Project. Design-Build Firm shall schedule and coordinate its Work around any such relocation or temporary service interruption. Design-Build Firm shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work. Relocation or shutdown of County facilities must be requested by the Design-Build Firm in writing a minimum of ten (10) days prior to the proposed Work. The County shall have the final decision with respect to whether the relocation or shutdown is required and when the relocation or shutdown of facilities may take place. The Work may need to be performed at night or on weekends to minimize the interruption of service or to meet the operational needs of the County's facilities.

## **3. PROGRESS PAYMENTS FOR CONSTRUCTION PHASE**

3.1. Design-Build Firm agrees and understands that funding limitations exist and that the expenditure of funds must be spread over the duration of the Project at regular intervals based on the Contract Amount and progress schedule. Accordingly, prior to submitting its first monthly application for payment, Design-Build Firm shall submit to the County and the County's Representative, for their review and approval, a Schedule of Values based upon the Contract Amount, listing the major elements of the Work and the dollar value for each element. After its approval by the County and County's Representative, this Schedule of Values shall be used as the basis for the Design-Build Firm's monthly applications for payment. This schedule shall be updated and submitted each month to the County's Representative along with a completed and notarized copy of the application for payment form. No voluntary acceleration or early completion of the Work shall modify the time of payments to Design-Build Firm as set forth in the approved Schedule of Values.

3.2. Prior to submitting its first monthly application for payment, Design-Build Firm shall submit to the County and the County's Representative a complete list of all its proposed Subcontractors and materialmen, showing the Work and materials involved and the dollar amount of each proposed subcontract. The first application for payment shall be submitted no earlier than thirty (30) days after the Commencement Date.

3.3. If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the Site or at another location agreed to by the County in writing, the application for payment shall also be accompanied by a Bill of sale, Invoice or other documentation warranting that the County has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the County's interest therein, all of which shall be subject to the County's satisfaction.

3.4. Design-Build Firm shall submit two (2) copies of its monthly application for payment to the County's Representative on or before the 25th day of each month for Work performed during the previous month. Invoices received after the 25th day of each month shall be considered for payment as part of the next month's application. Within ten (10) days after receipt of each application for payment, the County's Representative shall either:

3.4.1 indicate his/her approval of the requested payment;

3.4.2 indicate his/her approval of only a portion of the requested payment, stating in writing his/her reasons therefore; or

3.4.3 return the application for payment to the Design-Build Firm indicating, in writing, the reason for refusing to approve payment and the action necessary to make the payment request proper.

In the event of a total denial and return of the application for payment by the County's Representative, the Design-Build Firm may make the necessary corrections and resubmit the application for payment. The County shall, within thirty (30) days after County approval of an application for payment, pay the Design-Build Firm the amounts so approved. Provided, however, in no event shall the County be obligated to pay any amount greater than that portion of the application for payment approved by the County's Representative.

3.5. The County shall initially retain five percent (5%) of the gross amount of each monthly payment request or five percent (5%) of the portion thereof approved by the County's Representative for payment, whichever is less.

3.6. Monthly payments to Design-Build Firm shall in no way imply or constitute approval or acceptance of Design-Build Firm's work. Neither the acceptance of the Work nor payment by the County shall be deemed to be a waiver of the County's right to enforce any obligations of Design-Build Firm hereunder or to the recovery of damages for Defective Work not discovered by the County at the time of final inspection.

3.7. Each Application for Payment shall be accompanied by a Release and Affidavit, in the form attached as Exhibit D, showing that all materials, labor, equipment and other bills associated with that portion of the Work for which payment is being requested have been paid in full. The County shall not be required to make payment until and unless these affidavits are furnished by Design-Build Firm.

#### **4. PAYMENTS WITHHELD**

4.1. The County's Representative or the County may decline to approve any application for payment, or portions thereof, because of subsequently discovered evidence or subsequent inspections. The County's Representative or the County may nullify the whole or any part of any approval for payment previously issued and the County may withhold any payments otherwise due Design-Build Firm under this Agreement or any other agreement between the County and Design-Build Firm, to such extent as may be necessary in the County's opinion to protect it from loss because of:

4.1.1. Defective Work not remedied;

4.1.2. Third party claims filed or reasonable evidence indicating probable filing of such claims;

4.1.3. Failure of Design-Build Firm to make payment properly to Subcontractors or for labor, materials or equipment;

4.1.4. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount;

4.1.5. Reasonable indication that the Work will not be completed within the Contract Time;

4.1.6. Unsatisfactory prosecution of the Work by the Design-Build Firm;

4.1.7. Failure to provide accurate and current Record Drawings; or

4.1.8. Any other material breach of the Contract Documents.

4.2. If these conditions in Subsection 4.1 are not remedied or removed, the County may, after three (3) days' written notice, rectify the same at Design-Build Firm's expense. The County also may offset against any sums due Design-Build Firm the amount of any Liquidated or unliquidated obligations of Design-Build Firm to the County, whether relating to or arising out of this Agreement or any other agreement between Design-Build Firm and the County.

## **5. FINAL PAYMENT**

5.1. County shall make final payment to Design-Build Firm within thirty (30) days after the Work is finally inspected and accepted by County in accordance with Section 19 herein, provided that Design-Build Firm first, and as an explicit condition precedent to the accrual of Design-Build Firm's right to final payment, shall have furnished the County with a properly executed and notarized copy of the Release and Affidavit, as well as a duly executed copy of the Surety's consent to final payment and such other documentation that may be required by the Contract Documents and the County.

5.1.1. If liquidated damages are to be deducted from the final payment, the County shall so notify the Design-Build Firm in writing at least seven (7) days prior to the County's submittal of the invoice to the Clerk of Court for payment.

5.1.2. The Design-Build Firm shall submit to the County with the final payment documents a DBE Participation Certification, indicating all DBE Subcontractor(s) and amount(s) utilized for the project. If the Design-Build Firm did not utilize the DBE firm(s) listed on the Bid Proposal, a letter of justification shall be submitted along with the DBE Participation Certification.

5.2. Design-Build Firm's acceptance of final payment shall constitute a full waiver of any and all claims by Design-Build Firm against County arising out of this Agreement or otherwise relating to the Project, except those previously made in writing and identified by Design-Build Firm as unsettled at the time of the final application for payment. Neither the acceptance of the Work nor payment by County shall be deemed to be a waiver of County's right to enforce any obligations of Design-Build Firm hereunder or to the recovery of damages for Defective Work not discovered by the County's Representative or County at the time of final inspection.

## **6. SUBMITTALS AND SUBSTITUTIONS**

6.1. Design-Build Firm shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as a Schedule of Values, safety manual, Shop Drawings, data, test results, schedules and samples. Design-Build Firm shall submit all such materials at its own expense and in such form as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof.

6.2. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by the County if sufficient information is submitted by Design-Build Firm to allow the County to determine that the material or equipment proposed is equivalent or better than to that named. Requests for review of substitute items of material and equipment will not be accepted by the County from anyone other than Design-Build Firm and all such requests must be submitted by Design-Build Firm to the County's Representative.

6.3. If Design-Build Firm wishes to furnish or use a substitute item of material or equipment, Design-Build Firm shall make application to the County's Representative for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Design-Build Firm's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the County for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result, directly or indirectly, from acceptance of such substitute, including costs for redesign and claims of other Design-Build Firms affected by the resulting change, all of which shall be considered by the County's Representative in evaluating the proposed substitute. The County's Representative may require Design-Build Firm to furnish, at Design-Build Firm's expense, additional data about the proposed substitute.

6.4. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Design-Build Firm may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the County's Representative, if Design-Build Firm submits sufficient information to allow the County's Representative to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the County's Representative shall be the same as those provided herein for substitute materials and equipment.

6.5. The County's Representative shall be allowed a reasonable time within which to evaluate each proposed substitute. The County's Representative shall be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the County's Representative's and the County's prior written acceptance which shall be evidenced by either a Change Order or an approved Shop Drawing. The County may require Design-Build Firm to furnish, at Design-Build Firm's expense, a special performance guarantee or other Surety with respect to any substitute. The County's Representative will record time required by the County's Representative and the County's Representative's consultants in evaluating substitutions proposed by Design-Build Firm and making changes in the Contract Documents occasioned thereby. Whether or not the County accepts a proposed substitute, Design-Build Firm shall reimburse the County for the charges of the County's Representative and the County's Representative's consultants for evaluating each proposed substitute, or such charges may be deducted from an application for payment, at the County's sole discretion.

## **7. REPORTS, RECORD DRAWINGS AND MEETINGS**

7.1. Unless waived in writing by County, Design-Build Firm shall complete and submit to County's Representative on a weekly basis a daily log of the Design-Build Firm's work for the preceding week in a format approved by the County's Representative. The daily log shall document all activities of Design-Build Firm at the Project Site including, but not limited to, the following:

7.1.1. Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the Project Site, and any other weather conditions which adversely affect the Work;

7.1.2. Soil conditions which adversely affect the Work;

7.1.3. The hours of operation by Design-Build Firm's and Subcontractor's personnel;

7.1.4. The number of Design-Build Firm's and Subcontractor's personnel present and working at the Project Site, by subcontract and trade;

7.1.5. All equipment present at the Project Site, description of equipment use and designation of time equipment was used (specifically indicating any down time);

7.1.6. Description of Work being performed at the Project Site;

7.1.7. Any unusual or special occurrences at the Project Site;

7.1.8. Materials received at the Project Site;

7.1.9. A list of all visitors to the Project Site; and

7.1.10. Any problems that might impact either the cost or quality of the Work or the time of performance.

The daily log shall not constitute nor take the place of any notice required to be given by Design-Build Firm to the County pursuant to the Contract Documents.

7.2. Design-Build Firm shall maintain in a safe place at the Project Site one record copy of the Contract Documents, including, but not limited to, all Drawings, Specifications, addenda, amendments, Change Orders, Field Directive Change Orders, Work authorizations, Shop Drawings, as well as all written interpretations and clarifications, in good order and annotated to show all changes made during Construction. The annotated Drawings shall be continuously updated by the Design-Build Firm throughout the prosecution of the Work to accurately reflect all Field Directive Changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Field Directive Change Orders, and all concealed and buried installations of



pipng, conduit and utility services. All buried and concealed items, both inside and outside the Project Site, shall be accurately located on the annotated Drawings as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The annotated Drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. The annotated Drawings, together with all approved samples and a counterpart of all approved Shop Drawings, shall be available to County's Representative and the County for reference. Current and accurate annotated Drawings shall be submitted with each application for payment. Failure to provide current and accurate annotated Drawings shall be reason for rejecting the application for payment. Upon completion of the Work and as a condition precedent to Design-Build Firm's entitlement to final payment, the Record Drawings, samples and Shop Drawings shall be delivered to County's Representative by Design-Build Firm for the County.

7.3. Design-Build Firm shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of ten (10) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. County, or any duly authorized agents or representatives of County, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the ten (10) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

7.4 In addition to other requirements provided herein, the Design-Build Firm shall comply with public records laws embodied in Chapter 119, Florida Statutes, and specifically shall:

7.4.1. Keep and maintain public records required by the County in order to perform the Work identified herein.

7.4.2. Upon request from the County, the Design-Build Firm shall provide the County with any requested public records or allow the requested records to be inspected or copied within a reasonable time by the County.

7.4.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and thereafter if the Design-Build Firm does not transfer all records to the County.

7.4.4. Transfer, at no cost, to County all public records in possession of the Design-Build Firm upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County, upon request from the County, in a format that is compatible with the information technology systems of the County. If the Design-Build Firm keeps and maintains public records upon the conclusion of this Agreement, the Design-Build Firm shall meet all applicable requirements for retaining public records that would apply to the County.

7.5. If the Design-Build Firm does not comply with a public records request, the County shall treat that omission as breach of this Agreement and enforce the contract provisions accordingly. Additionally, if the Design-Build Firm fails to provide records when requested, the Design-Build Firm may be subject to penalties under Section 119.10, Florida Statutes, and reasonable costs of enforcement, including attorney fees.

**IF THE DESIGN-BUILD FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILD FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, [PRRCustodian@leegov.com](mailto:PRRCustodian@leegov.com); <http://www.leegov.com/publicrecords>.**

## **8. CONTRACT TIME AND TIME EXTENSIONS**

8.1. Design-Build Firm shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its Subcontractors and materialmen, as well as coordinating its Work with all work of others at the Project Site, so that its Work or the work of others shall not be delayed or impaired by any act or omission of Design-Build Firm. Design-Build Firm shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents.

8.2. Should Design-Build Firm be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Design-Build Firm, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes or lockouts, Design-Build Firm shall notify the County in writing within forty-eight (48) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Design-Build Firm may have had to request a time extension.

8.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which County may be responsible, in whole or in part, shall relieve Design-Build Firm of its duty to perform or give rise to any right to damages or additional compensation from County. Design-Build Firm expressly acknowledges and agrees that it shall receive no damages for delay. Design-Build Firm's sole remedy, if any, against County will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "no damage for delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.

## **9. CHANGES IN THE WORK**

9.1. County shall have the right, at any time during the progress of the Work, to increase or decrease the Work. Promptly after being notified of a change, Design-Build Firm shall submit an itemized quote of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or as expressly set forth herein, no addition or changes to the Work shall be made except upon written order of County as set forth in this Section, and County shall not be liable to the Design-Build Firm for any increased compensation without such written order. No officer, employee or agent of County is authorized to direct any extra or changed Work orally.

9.2. A Change Order, in the form attached as Exhibit F to this Agreement, shall be issued and executed promptly after an agreement is reached between Design-Build Firm and County concerning the requested changes. Design-Build Firm shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount shall be adjusted in the Change Order in the manner as County and Design-Build Firm shall mutually agree.

9.3. If County and Design-Build Firm are unable to agree on a Field Directive Change Order for the requested change, Design-Build Firm shall, nevertheless, promptly perform the change as directed by County in a written Field Directive Change Order. In that event, the Contract Amount and Contract Time shall be adjusted as directed by County. If Design-Build Firm disagrees with the County's adjustment determination, Design-Build Firm must make a claim pursuant to Section 10 of these General Terms and Conditions or else be deemed to have waived any claim on this matter it might otherwise have had.

9.4. In the event a requested change results in an increase to the Contract Amount, the amount of the increase shall be limited to the Design Build Firm's reasonable direct labor and material costs and reasonable actual equipment costs as a result of the change (including Allowance for labor burden costs) plus a maximum ten percent (10%) markup for all profit. However, where the Work involved is covered by unit prices contained in the Contract Documents or subsequently agreed upon, those unit prices shall be applied to the quantities of the items involved.

9.4.1. In the event such changed Work is performed by a Subcontractor, a maximum ten percent (10%) markup for all profit for all Subcontractors' and subcontractors' direct labor and material costs and actual equipment costs shall be permitted, with a maximum five percent (5%) markup thereon by the Design-Build Firm for all of its profit, for a total maximum markup of fifteen percent (15%). All compensation due Design-Build Firm and any Subcontractor or subcontractor for field and home office overhead is included in the markups noted above.

9.5. County shall have the right to conduct an audit of Design-Build Firm's books and records to verify the accuracy of the Design-Build Firm's claim with respect to Design-Build Firm's costs associated with any Change Order.

9.6. The County shall have authority to order minor changes in the Work not involving an adjustment to the Contract Amount and not inconsistent with the intent of the Contract Documents. Such changes may be effected by Field Directive Change Order or by other written order. Such changes shall be binding on the Design-Build Firm.

## **10. CLAIMS AND DISPUTES**

10.1 In the event of a dispute or claim arising out of this Agreement, the Design-Build Firm shall notify the County and County's Representative in writing within forty eight (48) hours after the first day of the event giving rise to such claim or dispute or else the Design-Build Firm shall be deemed to have waived the claim or dispute. Written supporting data shall be submitted to the County and County's Representative within fifteen (15) days after the occurrence of the event, unless the County grants additional time in writing, or else the Design-Build Firm shall be deemed to have waived the claim or dispute.

10.2 In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.

10.3 In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.

10.4 Any dispute, action or proceeding arising out of or related to this Agreement shall be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists, in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.

10.5 This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.

10.6 The Design-Build Firm shall proceed diligently with its performance as directed by the County, regardless of any pending claim, action, suit or administrative proceeding, unless otherwise agreed to by the County in writing. The County shall continue to make payments in accordance with the Contract Documents during the pendency of any claim.

## **11. OTHER WORK**

11.1. The County may perform other work related to the Project at the Site by the County's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, forty-eight (48) hours' written notice thereof will be given to Design-Build Firm prior to starting any such other work. If Design-Build Firm believes that such performance will involve additional expense to Design-Build Firm or require additional time, Design-Build Firm shall send written notice of that fact to the County and County's Representative within forty-eight (48) hours of being notified of the other work. If the Design-Build Firm fails to send the above required forty-eight (48) hour notice, the Design-Build Firm shall be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Amount.

11.2. Design-Build Firm shall afford each utility owner and other Design-Build Firm who is a party to such a direct contract (or the County, if the County is performing the additional work with the County's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Design-Build Firm shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design-Build Firm shall not endanger any work of others by cutting, excavating or otherwise altering their work and shall only cut or alter their work with the written consent of the County's Representative and the others whose work will be affected. The duties and responsibilities of Design-Build Firm under this paragraph are for the benefit of such utility owners and other Design-Build Firms to the extent that there are comparable provisions for the benefit of Design-Build Firm in said direct contracts between the County and such utility owners and other Design-Build Firms.

11.3. If any part of Design-Build Firm's Work depends for proper execution or results upon the work of any other contractor or utility owner (or the County), Design-Build Firm shall inspect and promptly report to County's Representative in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Design-Build Firm's failure to report shall constitute an acceptance of the other work as fit and proper for integration with Design-Build Firm's Work.

## **12. INDEMNIFICATION AND INSURANCE**

12.1. Design-Build Firm agrees to save harmless, indemnify, and defend or, at the option of the County, pay the cost of defense, on behalf of the County, the County's employees and representatives from any and all claims, losses, penalties, demands, judgments, and costs of suit, including attorneys' fees and paralegals' fees, for any expense, damage or liability incurred by any of them, whether in negligence, gross negligence, strict liability, or for personal injury, death, property damage, direct or consequential damages, or economic loss, arising directly or indirectly on account of or in connection with the Work performed by Design-Build Firm under this Agreement or by

any person, firm or corporation to whom any portion of the Work is subcontracted by Design-Build Firm or resulting from the use by Design-Build Firm, or by any one for whom Design-Build Firm is legally liable, of any materials, tools, machinery or other property of the County. The County and Design-Build Firm agree the first \$100.00 of the Contract Amount paid by the County to Design-Build Firm shall be given as separate consideration for this indemnification, and any other indemnification of the County by Design-Build Firm provided for within the Contract Documents, the sufficiency of such separate consideration being acknowledged by Design-Build Firm by Design-Build Firm's execution of the Agreement.

The Design-Build Firm's obligation under this provision shall not be limited in any way by the agreed upon Contract Amount as shown in this Contract or the Design-Build Firm's limit of, or lack of, sufficient insurance protection.

12.2. Design-Build Firm shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in the Insurance Requirements attached to this Agreement as Exhibit C. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies which are registered with the State of Florida. Prior to execution of the Agreement, Design-Build Firm shall provide the County with properly executed Certificates of Insurance to evidence Design-Build Firm's compliance with the insurance requirements of the Contract Documents. Said Certificates of Insurance shall be on forms approved by the County. The Certificates of Insurance shall be personally, manually signed by the authorized representatives of the insurance company/companies shown on the Certificates of Insurance, with proof that they are authorized representatives thereof. In addition, certified, true and exact copies of all insurance policies required hereunder shall be provided to the County, on a timely basis, when requested by the County.

12.3. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice by registered or certified mail shall be given to the County of any cancellation, intent not to renew, or reduction in the policies or coverages, except in the application of the aggregate limits provisions. In the event of a reduction in the aggregate limit of any policy, Design-Build Firm shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

12.4. To the extent multiple insurance coverage and/or County's self-insured retention may apply, any and all insurance coverage purchased by Design-Build Firm and its Subcontractors identifying the County as an additional named insured shall be primary. The acceptance by the County of any Certificate of Insurance does not constitute approval or agreement by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of the Contract Documents. No Work shall commence at the Project Site unless and until the required Certificates of Insurance are received by the County.

12.5. The Design-Build Firm will be fully responsible for all acts and omissions of his Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts they may be liable to the same extent that they are employed by him. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor and the County. The County may, upon request, furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the Design-Build Firm on account of specific Work done.

12.6. Design-Build Firm shall require each of its Subcontractors to procure and maintain, until the completion of the Subcontractor's work, insurance of the types and to the limits specified in the Insurance Requirements attached to this Agreement, unless such insurance requirements for the Subcontractor are expressly waived in writing by the County. All liability insurance policies, other than professional liability, workers' compensation, employer's liability and business auto liability policies, obtained by Design-Build Firm to meet the requirements of the Contract Documents shall name the County and County's Representative as additional insureds. If any insurance provided pursuant to the Contract Documents expires prior to the completion of the Work, renewal Certificates of Insurance and, if requested by the County, certified, true copies of the renewal policies, shall be furnished by Design-Build Firm within thirty (30) days prior to the date of expiration.

12.7. Should at any time the Design-Build Firm not maintain the insurance coverages required herein, the County may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the Design-Build Firm for such coverages purchased. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the County to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

12.8. Design-Build Firm shall submit to County's Representative a copy of all accident reports arising out of any injuries to its employees or those of any firm or individual to whom it may have subcontracted a portion of the Work, or any personal injuries or property damages arising or alleged to have arisen on account of any Work by Design-Build Firm under the Contract Documents.

### **13. COMPLIANCE WITH LAWS**

13.1 Design-Build Firm agrees to comply, at its own expense, with all Laws and Regulations, including federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the Project, including but not limited to those dealing with taxation, workers' compensation, equal employment and safety. If Design-Build Firm observes that the Contract Documents are at variance therewith, it shall promptly notify the County and County's Representative in writing.

## **14. CLEANUP AND PROTECTIONS**

14.1. Design-Build Firm agrees to keep the Project Site clean at all times of debris, rubbish and waste materials arising out of the Work. At the completion of the Work, Design-Build Firm shall remove all debris, rubbish and waste materials from and about the Project Site, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Project Site clean and ready for occupancy by County.

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

14.3. If the Design-Build Firm fails to clean up as provided in the Contract Documents, the County may do so and the cost thereof shall be deducted from the final payment due the Design-Build Firm.

## **15. ASSIGNMENT**

15.1. Design-Build Firm shall not assign this Agreement or any part thereof, without the prior consent in writing of the County. The provisions of this agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. Design-Build Firm will not sell, transfer, assign, license, franchise, restructure, alter or change its corporate structure or otherwise part with possession or mortgage, charge or encumber any right or obligation under this agreement without the proposed assigned and/or party restructuring, altering or changing its corporate structure agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this agreement whether express or implied as if the proposed assignee and/or restructuring, altering or changing its corporate structure was an original contracting party to this agreement.

## **16. PERMITS, LICENSES AND TAXES**

16.1. Pursuant to Section 218.80, Florida Statutes, the County will pay for all County permits and fees, including permit fees, impact fees or inspection fees applicable to the Work. Design-Build Firm is not responsible for paying for permits issued by the County wherein the Work is to be performed, but is responsible for acquiring all other permits. The County may require the Design-Build Firm to deliver internal budget transfer documents to applicable County agencies when the Design-Build Firm is acquiring permits.



16.2. All permits, fees, royalties, and claims necessary for the prosecution of the Work, which are not issued by the County, shall be acquired and paid for by the Design-Build Firm. The Design-Build Firm and its sureties, together with his officers, agents, and employees, shall protect and hold the County harmless against any and all demands made for such fees or claims brought or made by holder of any invention or patent.

16.3. The Design-Build Firm shall be fully responsible for the execution and adherence to all directives, instructions, conditions, special conditions, and limiting conditions contained in permits specifically issued for the Work and which pertain to or affect the construction phase of this project, and shall be solely responsible for issuance of any Notices required thereby.

## **17. CONTRACT TERMINATION**

17.1 MATERIAL BREACH A Design-Build Firm may be Terminated for Cause by the County, at the sole discretion of the Procurement Management Director, for failing to perform a contractual requirement or for a material breach of any term or condition. A material breach of a term or condition of the Agreement may include but is not limited to: 1. Design-Build Firm failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Agreement; 2. Design-Build Firm failure to carry out any warranty or fails to perform or comply with any mandatory provision of the Agreement; 3. Design-Build Firm becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; 4. Design-Build Firm becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Design-Build Firm's proper performance hereunder; 5. Appointment of any receiver, trustee, or similar official for Design-Build Firm or any of the Design-Build Firm's property and such appointment endangers the Design-Build Firm's proper performance hereunder; 6. A determination that the Design-Build Firm is in violation of federal, state, or local laws or regulations and that such determination renders the Design-Build Firm unable to perform any aspect of the Agreement.

17.2 OPPORTUNITY TO CURE In the event that Design-Build Firm fails to perform a contractual requirement or materially breaches any term or condition, the County may issue a written cure notice. The Design-Build Firm may have a period of time in which to cure. The County is not required to allow the Design-Build Firm to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of the County. Time allowed for cure shall not diminish or eliminate Design-Build Firm's liability for damages, or otherwise affect any other remedies available against Design-Build Firm under the Agreement or by law. If the breach remains after Design-Build Firm has been provided the opportunity to cure, the County may do any one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this Agreement and any related contracts or portions thereof; 3. Procure replacements and impose damages as set forth elsewhere in this Agreement, if applicable; 4. Impose actual or liquidated damages; 5. Suspend or bar Design-Build Firm from receiving future solicitations or other

opportunities; 6. Require Design-Build Firm to reimburse the County for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Agreement.

17.3 TERMINATION FOR CAUSE In the event the Procurement Management Director, in his/her sole discretion, determines that the Design-Build Firm has failed to comply with the conditions of this Agreement in a timely manner or is in material breach, the Procurement Management Director has the right to terminate this Agreement, in part or in whole. If corrective action is deemed acceptable by the County, the Procurement Management Director shall notify the Design-Build Firm in writing of the need to take corrective action and the date in which the corrective action must be completed. If corrective action is not completed as specified by the Procurement Management Director, or if such corrective action is deemed by the County to be insufficient, the Agreement may be terminated by the County. The County reserves the right to withhold further payments, or prohibit the Design-Build Firm from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Design-Build Firm or a decision by the County to terminate the Agreement. In the event of termination, the County shall have the right to procure any replacement materials, supplies, services and/or equipment that are the subject of this Agreement on the open market. In addition, the Design-Build Firm shall be liable for damages as authorized by law including, but not limited to, any price difference between the original Agreement and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. If it is determined that: (1) the Design-Build Firm was not in material breach; or (2) failure to perform was outside of Design-Build Firm's or its subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience." The rights and remedies of the County provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

17.4 TERMINATION FOR CONVENIENCE Except as otherwise provided in this Agreement, the County, at the sole discretion of the Procurement Management Director, may terminate this Agreement, in whole or in part by giving thirty (30) calendar days written notice beginning on the second day after mailing to the Design-Build Firm. If this Agreement is so terminated, the County shall be liable only for payment required under this Agreement for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the County prior to the effective date of Agreement termination. The County shall have no other obligation whatsoever to the Design-Build Firm for such termination.

## **18. COMPLETION**

18.1. When the entire Work (or any portion thereof designated in writing by the County) is ready for its intended use, Design-Build Firm shall notify the County and County's Representative in writing that the entire Work (or such designated portion) is Substantially Complete and request that County's Representative issue a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion). Within a

reasonable time thereafter, the County, Design-Build Firm and County's Representative shall perform an inspection of the Work (or designated portion thereof) to determine the status of completion. If the County and County's Representative do not consider the Work (or designated portion) Substantially Complete, County's Representative shall notify Design-Build Firm in writing giving the reasons therefor. If the County and County's Representative consider the Work (or designated portion) Substantially Complete, County's Representative shall prepare and deliver to Design-Build Firm a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date of Substantial Completion for the entire Work (or designated portion thereof) and include a tentative punch list of items to be completed or corrected by Design-Build Firm before final payment. The County shall have the right to exclude Design-Build Firm from the Work and Project Site (or designated portion thereof) after the date of Substantial Completion, but the County shall allow Design-Build Firm reasonable access to complete or correct items on the tentative punch list. The risk of loss, injury, or destruction of the Project and Work performed thereon shall be on the Design-Build Firm until the Certificate of Substantial Completion (or Partial Substantial Completion) is approved by the County's Representative. Title to the Project and Work shall pass to the County when the Certificate of Substantial Completion (or Partial Substantial Completion) is approved by the County's Representative.

18.2. Upon receipt of written certification by Design-Build Firm that the Work is completed in accordance with the Contract Documents and is ready for final inspection and acceptance and upon receipt of a final application for payment, County's Representative will make such inspection and, if he/she finds the Work acceptable and fully performed under the Contract Documents, he/she shall promptly issue a final Certificate for Payment, recommending that, on the basis of his/her observations and inspections, and the Design-Build Firm's certification that the Work has been completed in accordance with the terms and conditions of the Contract Documents, that the entire balance found to be due Design-Build Firm is due and payable. Neither the final payment nor the retainage shall become due and payable until Design-Build Firm submits: (1) the Release and Affidavit in the form attached, (2) consent of Surety to final payment, (3) if required by the County, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by the County, and (4) all required as-builts, Shop Drawings, and other submittals. The County reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though the County's Representative may have issued his/her recommendations. Unless and until the County is completely satisfied, neither the final payment nor the retainage shall become due and payable.

18.3. Prior to final payment, the County's Representative may request the Design-Build Firm to permit the use of a specified part of the Project which the County believes it may use without significant interference with construction of the other parts of the Project. If the Design-Build Firm agrees, he will certify to the County's Representative that said part of the Project is Substantially Complete and request the County's Representative to issue a Certificate of Substantial Completion for that part of the Project.

Within fourteen (14) days thereafter, the County's Representative and the Design-Build Firm will make an inspection of that part of the Project to determine its status of completion. If the County considers that part of the Project to be Substantially Complete, the County's Representative will deliver to the Design-Build Firm a certificate to that effect, fixing the date of Substantial Completion as to that part of the Project, and listing the punch list of items to be completed or corrected before final payment and fixing the responsibility between the County and the Design-Build Firm for maintenance, heat and utilities as to that part of the Project. The County shall have the right to exclude the Design-Build Firm from any part of the Project which is so certified to be Substantially Complete but the County will allow the Design-Build Firm reasonable access to complete or correct items on the punch list.

18.4. Upon Final Completion of the Project, the County's project manager shall prepare a Design-Build Firm Performance Evaluation and forward it to the Design-Build Firm for review, comment and signature.

18.5. Upon receipt of the Design-Build Firm Performance Evaluation, the Design-Build Firm has seven (7) days to review, comment, sign and return the form to the County. If the evaluation has not been received back from the Design-Build Firm within the allotted days, the County will assume the Design-Build Firm fully agrees with and has no comments with respect to the evaluation. The evaluation will then be placed on file with the County's Department of Procurement Management.

## **19. WARRANTY**

19.1. Design-Build Firm shall obtain and assign to the County all express warranties given to Design-Build Firm or any subcontractors by any materialmen supplying materials, equipment or fixtures to be incorporated into the Project.

19.2. Design-Build Firm warrants to the County that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Design-Build Firm further warrants to the County that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, Suppliers or processors except as otherwise provided for in the Contract Documents. If, within one (1) year after Final Completion, any Work is found to be Defective or not in conformance with the Contract Documents, Design-Build Firm shall correct it promptly after receipt of written notice from the County. Design-Build Firm shall also be responsible for and pay for replacement or repair of adjacent materials or Work which may be damaged as a result of such replacement or repair. These warranties are in addition to those express or implied warranties to which the County is entitled as a matter of law.

19.3. The Design-Build Firm warrants and guarantees that title to all Work, materials and equipment covered by an application for progress payment, whether incorporated in the Project or not, will be passed to the County prior to the next application for progress payment, free and clear of all liens, claims, security interest and encumbrances; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Design-Build Firm or by any other person performing the Work at the site or furnishing materials and equipment for the Project subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Design-Build Firm or such other person.

## **20. TESTS AND INSPECTIONS**

20.1. The County, County's Representative, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project Site, for their observation, inspection and testing. Design-Build Firm shall provide proper, safe conditions for such access. Design-Build Firm shall provide County's Representative with a minimum of 48 hours' notice for all required inspections, tests or approvals.

20.2. If the Contract Documents or any codes, Laws and Regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested or approved, Design-Build Firm shall assume full responsibility therefore, pay all costs in connection therewith and furnish County's Representative the required certificates of inspection, testing or approval. When any portion of the Work subject to inspection or test is ready for such, the Design-Build Firm shall provide the County's Representative a minimum of forty-eight (48) hours' notice prior to the inspection or testing, except as otherwise provided in the Contract Documents. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to the County's Representative and the County. Testing and inspections shall be conducted in accordance with the Design Criteria Package.

20.3. If any Work that is to be inspected, tested or approved is covered without written concurrence from the County's Representative, such Work must, if requested by County's Representative, be uncovered for observation or fully re-performed per the Design Criteria Package. Such uncovering shall be at Design-Build Firm's expense unless Design-Build Firm has given County's Representative a minimum of 48 hours' notice of Design-Build Firm's intention to cover the same and County's Representative has not acted with reasonable promptness to respond to such notice. If any Work is covered contrary to written directions from County's Representative, such Work must, if requested by County's Representative, be uncovered for County's Representative's observation and be replaced at Design-Build Firm's sole expense.

20.4. The County shall charge to Design-Build Firm and may deduct from any payments due Design-Build Firm all engineering and inspection expenses incurred by the County in connection with any overtime Work. Such overtime Work consisting of any

Work during the Construction period beyond the regular eight (8) hour day and for any Work performed on Saturday, Sunday or holidays recognized by Lee County, Florida.

20.5. Project field testing of materials required by the specifications or the County's Representative shall be provided by and at the expense of the County. The Design-Build Firm shall coordinate and schedule the required testing. The Design-Build Firm shall pay for all retests when the initial test result reveals that the materials failed to meet the requirements of the specifications. The Design-Build Firm shall notify County's Representative seven (7) days prior to conducting any test so County's Representative may be present. County's Representative shall have the right to require all materials to be submitted to tests prior to incorporation in the Work. In some instances, it may be expedient to perform these tests at the source of supply, and for this reason, it is required that the Design-Build Firm furnish County's Representative with the information concerning the location of his source before incorporating material into the Work. This does not in any way obligate County's Representative to perform tests for acceptance of material and does not relieve the Design-Build Firm of his responsibility to furnish satisfactory material. The Design-Build Firm shall furnish manufacturer's certificates of compliance with these specifications covering manufactured items incorporated in the Work.

20.6. Neither observations nor other actions by County's Representative nor inspections, tests or approvals by others shall relieve Design-Build Firm from Design-Build Firm's obligations to perform the Work in accordance with the Contract Documents.

## **21. DEFECTIVE WORK**

21.1. Work not conforming to the requirements of the Contract Documents in the sole judgment of the County's Representative shall be deemed Defective Work. If required by the County or County's Representative, Design-Build Firm shall, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or if the Defective Work has been rejected by the County or County's Representative, remove it from the Site and replace it with conforming Work. Design-Build Firm shall bear all direct, indirect and consequential costs of such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold the County harmless for same.

21.2. If the County or County's Representative consider it necessary or advisable that covered Work be observed by County's Representative or inspected or tested by others, Design-Build Firm, at the County's or County's Representative's request, shall uncover, expose or otherwise make available for observation, inspection or tests as the County or County's Representative may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is Defective, Design-Build Firm shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), and the County shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be Defective,

Design-Build Firm shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

21.3. If any portion of the Work is Defective, or Design-Build Firm fails to supply sufficient skilled workers with suitable materials or equipment, or fails to finish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the County or County's Representative may order Design-Build Firm to stop the Work, or any portion thereof, until the cause for such stop in the Work has been eliminated; however, this right of the County and County's Representative to stop the Work shall not give rise to any duty on the part of the County or County's Representative to exercise this right for the benefit of Design-Build Firm or any other party.

21.4. Should the County determine, in its sole opinion, that it is in the County's best interest to accept Defective Work, the County may do so. Design-Build Firm shall bear all direct, indirect and consequential costs attributable to the County's evaluation of and determination to accept Defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such Defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Amount. If the County accepts such Defective Work after final payment, Design-Build Firm shall promptly pay the County an appropriate amount to adequately compensate the County for its acceptance of the Defective Work.

21.5. If Design-Build Firm fails, within a reasonable time after the written notice from the County or County's Representative, to correct Defective Work or to remove and replace rejected Defective Work as required by County's Representative or the County, or if Design-Build Firm fails to perform the Work in accordance with the Contract Documents, or if Design-Build Firm fails to comply with any of the provisions of the Contract Documents, the County may, after seven (7) days' written notice to Design-Build Firm, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, the County may exclude Design-Build Firm from any or all of the Project Site, take possession of all or any part of the Work, and suspend Design-Build Firm's services related thereto, take possession of Design-Build Firm's tools, appliances, construction equipment and machinery at the Project Site and incorporate in the Work all materials and equipment stored at the Project Site or for which the County has paid Design-Build Firm but which are stored elsewhere. Design-Build Firm shall allow the County, County's Representative and their respective representatives, agents, and employees such access to the Project Site as may be necessary to enable the County to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of the County in exercising such rights and remedies shall be charged against Design-Build Firm, and a Change Order shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Design-Build Firm's Defective Work. At the discretion of the County, Design-Build Firm may not be

allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the County of the County's rights and remedies hereunder.

## **22. SUPERVISION AND SUPERINTENDENTS**

22.1. Design-Build Firm shall plan, organize, supervise, schedule, monitor, direct and control the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Design-Build Firm shall be responsible to see that the finished Work complies accurately with the Contract Documents. Design-Build Firm shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without prior written notice to County except under extraordinary circumstances. The superintendent shall be Design-Build Firm's representative at the Project Site and shall have authority to act on behalf of Design-Build Firm. All communications given to the superintendent shall be as binding as if given to the Design-Build Firm. County shall have the right to direct Design-Build Firm to remove and replace its Project superintendent, with or without cause.

## **23. PROTECTION OF WORK**

23.1. Design-Build Firm shall fully protect the Work from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. If Design-Build Firm or any one for whom Design-Build Firm is legally liable is responsible for any loss or damage to the Work, or other work or materials of the County or the County's separate Design-Build Firms, Design-Build Firm shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Design-Build Firm.

23.2. Design-Build Firm shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Build Firm subject any part of the Work or adjacent property to stresses or pressures that will endanger said Work or property.

23.3. Design-Build Firm shall not disturb any benchmark established by the County's Representative with respect to the Project. If Design-Build Firm, or its subcontractors, agents or anyone for whom Design-Build Firm is legally liable, disturbs the County's Representative's benchmarks, Design-Build Firm shall immediately notify the County and County's Representative. The County's Representative shall reestablish the benchmarks and Design-Build Firm shall be liable for all costs incurred by the County associated therewith.

## **24. EMERGENCIES**

24.1. In the event of an emergency affecting the safety or protection of persons or the Work or property at the Project Site or adjacent thereto, Design-Build Firm, without special instruction or authorization from the County's Representative, is obligated



to act to prevent threatened damage, injury or loss. Design-Build Firm shall give County written notice within forty-eight (48) hours after the occurrence of the emergency, if Design-Build Firm believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the County determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Design-Build Firm fails to provide the forty-eight (48) hour written notice noted above, the Design-Build Firm shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time.

## **25. USE OF PREMISES**

25.1. The County will furnish, as indicated in the Contract Documents and not later than the date when needed by the Design-Build Firm, the lands which entail the Project Site upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designated for the use of the Design-Build Firm. The Design-Build Firm shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment unless designated otherwise.

25.2 The Design-Build Firm shall be responsible for staging and storing equipment or materials. Design-Build Firm shall confine all construction equipment, the storage of materials and equipment and the operations of workers to the Project Site and land and areas identified in and permitted by the Contract Documents and other lands and areas permitted by law, rights-of-way, permits and easements, and shall not unreasonably encumber the Project Site with construction equipment or other material or equipment. Design-Build Firm shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the Work.

## **26. SAFETY**

26.1. Design-Build Firm shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Design-Build Firm shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

26.1.1. All employees on the Work and other persons and/or organizations who may be affected thereby;

26.1.2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site; and

26.1.3. Other property on Project Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and any underground

structures or improvements not designated for removal, relocation or replacement in the Contract Documents.

26.2. Design-Build Firm shall comply with all applicable codes, Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Design-Build Firm shall erect and maintain all necessary safeguards for such safety and protection. Design-Build Firm shall notify owners of adjacent property and of underground structures and improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Design-Build Firm's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by the County has occurred.

26.3. The Design-Build Firm shall designate a responsible representative at the Project Site whose duty shall be the prevention of accidents. This person shall be Design-Build Firm's superintendent unless otherwise designated in writing by the Design-Build Firm to the County. County shall have the right to direct Design-Build Firm to remove and replace this individual, with or without cause.

## **27. PROJECT MEETINGS**

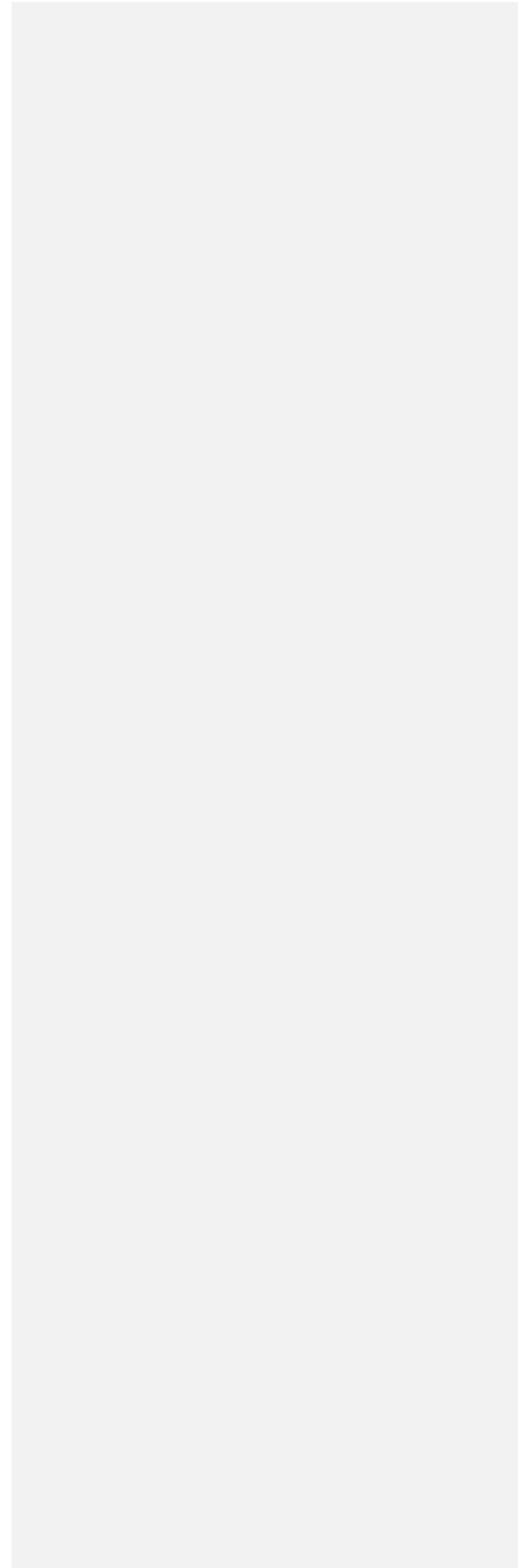
27.1. Prior to the commencement of Work, the Design-Build Firm shall attend a preconstruction conference with the County's Representative and others as appropriate to discuss the progress schedule, procedures for handling Shop Drawings and other Submittals, and for processing applications for payment, and to establish a working understanding among the parties as to the Work. During the prosecution of the Work, the Design-Build Firm shall attend any and all meetings convened by the County's Representative or the County with respect to the Project, when directed to do so by the County or County's Representative. Meetings shall be in-person unless otherwise noted by the County's Representative. Design-Build Firm shall have its subcontractors and suppliers attend all such meetings (including the preconstruction conference) as may be directed by the County or County's Representative.

[End of Exhibit A]

**EXHIBIT B**

**FORM OF PERFORMANCE AND PAYMENT BOND**

DRAFT



**EXHIBIT "B"**  
**PUBLIC CONSTRUCTION PERFORMANCE AND PAYMENT BOND**

By this bond, we [Name of Design-Build Firm], as Principal, and [Name of Surety], as Surety, are bound to Lee County Board of County Commissioners, a political subdivision of the State of Florida, herein called Owner, in the sum of [Total Contract Price], for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

**THE CONDITION OF THIS BOND NO. [Insert bond number assigned by surety] IS** that is that if Principal:

1. Performs this contract dated \_\_\_\_\_, 20\_\_\_\_, between Principal and Owner for construction of improvements known as [Name of Project] located at [Street Address or Legal Description], under Lee County Solicitation No. [Solicitation number], the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05 (1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section [255.05\(2\)](#), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes do not affect Surety's obligation under this bond.

	<b>OWNER</b>	<b>PRINCIPAL</b>	<b>SURETY</b>
<b>NAME</b>	Lee County Board of County Commissioners	[Name of Design-Build Firm]	[Name of Surety]
<b>ADDRESS</b>	2115 Second St. Fort Myers, FL 33901	[Principal Business Address of Design-Build Firm]	[Principal Business Address of Surety]
<b>PHONE NUMBER</b>	239-533-2221	[Principal Business Phone of Design-Build Firm]	[Principal Business Phone of Surety]

\_\_\_\_\_  
[Name of Design-Build Firm] DATED THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 2\_\_\_\_\_

By: \_\_\_\_\_  
[Printed Name and Title of Signer]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by [name of person acknowledging].

(NOTARY SEAL) \_\_\_\_\_  
Signature of Notary Public  
[Name of Notary Typed, Printed, or Stamped]

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced:

\_\_\_\_\_  
[Name of Surety] DATED THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 2\_\_\_\_\_

By: \_\_\_\_\_  
[Printed Name] as Attorney in Fact

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

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

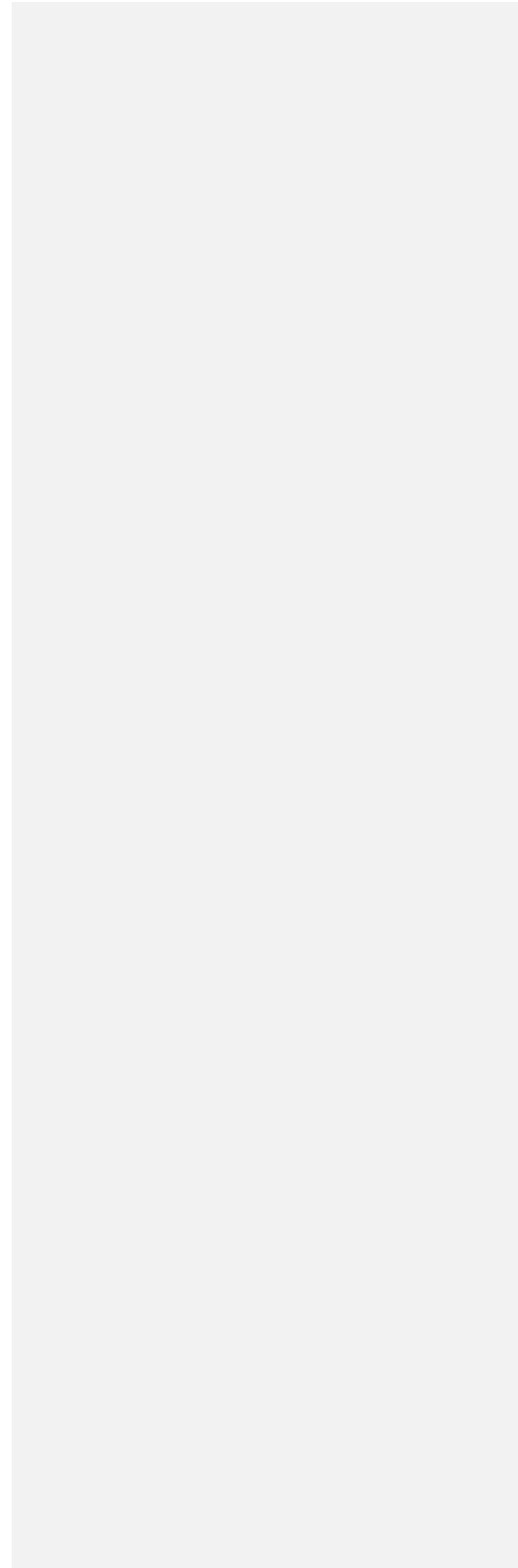
The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by [name of person acknowledging].

(NOTARY SEAL) \_\_\_\_\_  
Signature of Notary Public  
[Name of Notary Typed, Printed, or Stamped]

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced:

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

DRAFT



## EXHIBIT "C"

### **INSURANCE REQUIREMENTS CERTIFICATES OF INSURANCE**

(1) The Design-Build Firm shall obtain and maintain such insurance as will protect it from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of its employees including claims insured by usual personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction of tangible property including loss of use resulting there from -- any or all of which claims may arise out of, or result from, the services, Work and operations carried out pursuant to and under the requirements of the Contract Documents, whether such services, Work and operations be by the Design-Build Firm, its employees, or by subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

(2) This insurance shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

(3) The Design-Build Firm shall require, and shall be responsible for ensuring throughout the time the Agreement is in effect, that any and all of its subcontractors obtain and maintain until the completion of that subcontractor's work, such of the insurance coverages described herein as are required by law to be provided on behalf of their employees and others.

(4) The Design-Build Firm shall obtain, have and maintain during the entire period of the Agreement insurance policies, which contain the following information and provisions:

- (A) The name and type of policy and coverages provided;
- (B) The amount or limit applicable to each coverage provided;
- (C) The date of expiration of coverage;
- (D) The designation of the County as an additional insured and a certificate holder (This requirement may be excepted for workers' compensation and professional liability Insurance);
- (E) The following clause must appear on the Certificate of Insurance:

Should any material change occur in any of the above described policies or should any of said policies be canceled before the expiration date thereof, the issuing company shall mail at least thirty (30) days' written notice to the County.

(5) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the Work or termination of the Agreement, the Design-Build Firm shall furnish to the County, in triplicate, renewal or replacement Certificate(s)

of Insurance not later than thirty (30) days prior to the date of their expiration. Failure of the Design-Build Firm to provide the County with such renewal certificate(s) shall be considered justification for the County to terminate the Agreement.

(6) Design-Build Firm shall include the County, the County's agents, officers and employees in the Design-Build Firm's General Liability and Automobile Liability policies as additional insureds.

(7) If the County has any objection to the coverage afforded by other provisions of the insurance required to be purchased and maintained by Design-Build Firm in accordance with the requirements of the Contract Documents on the basis of its not complying with the Contract Documents, the County shall notify Design-Build Firm in writing thereof within thirty (30) days of the delivery of such certificates to the County. Design-Build Firm shall provide to the County such additional information with respect to its insurance as may be requested.

(8) The Design-Build Firm shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the Vendor's interest or liabilities. The following are the required minimums the Vendor must maintain throughout the duration of this Contract. The County reserves the right to request additional documentation regarding insurance provided.*

- a. Commercial General Liability - Coverage shall apply to premises and/or operations, products and completed operations, independent Design-Build Firms, and contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence  
\$2,000,000 general aggregate  
\$1,000,000 products and completed operations  
\$1,000,000 personal and advertising injury

- b. Business Auto Liability - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL) or

- c. Workers' Compensation - Statutory benefits as defined by Chapter 440, Florida Statutes, encompassing all operations contemplated by this Contract or Agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers' Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident  
\$500,000 disease limit  
\$500,000 disease – policy limit



- d. Builders Risk Insurance - This coverage will be provided by all Design-Build Firms involved in the construction of a new building, or the improvement, alteration or renovation of an existing structure with project value of \$500,000 or more. This coverage should be considered automatic on projects involving new construction or major additions to existing structures and in addition to the general liability and workers' compensation requirements found in this manual.
- e. Errors and Omissions - Coverage shall include professional liability insurance to cover claims arising out of negligent acts, errors or omissions of professional advice or other professional services.

\$1,000,000 combined single limit of bodily injury and property damage

\*The required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies," in which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."

Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the Contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

a. The certificate holder shall read as follows:

Lee County Board of County Commissioners  
P.O. Box 398  
Fort Myers, Florida 33902

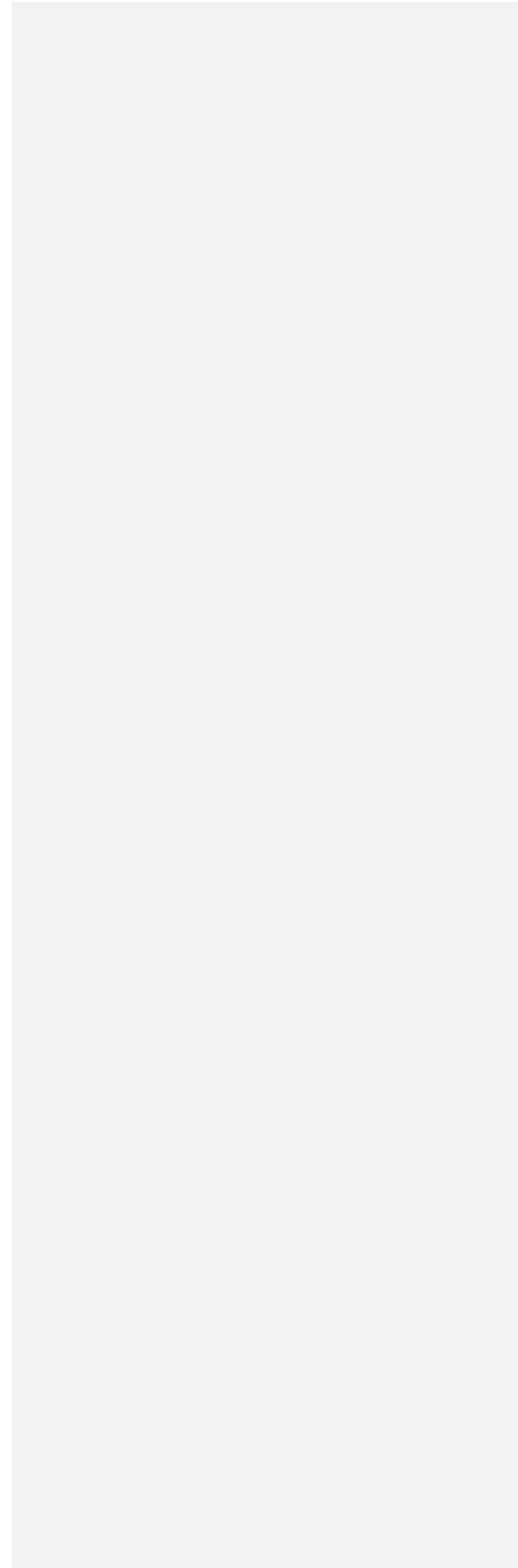
b. "Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials" will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.

Special Requirements:

- 1. An appropriate "Indemnification" clause shall be made a provision of the Contract.
- 2. If applicable, it is the responsibility of the general Design-Build Firm to ensure that all subcontractors comply with all insurance requirements.
- 3. Place the project name and number in the Description of Operations box.
- 4. Insurance carriers providing coverage required herein shall be licensed to conduct business in the State of Florida and shall possess a current A.M. Best's Financial Strength Rating of "B or better".

**EXHIBIT D**  
**FORM OF RELEASE AND AFFIDAVIT**

DRAFT



**EXHIBIT "D"**

**RELEASE AND AFFIDAVIT**

COUNTY OF \_\_\_\_\_

STATE OF FLORIDA

Before me, the undersigned authority, personally appeared

\_\_\_\_\_,  
who after being duly sworn, deposes and says:

(1) In accordance with the Contract Documents and in consideration of \$ \_\_\_\_\_ paid, \_\_\_\_\_ ("Design-Build Firm") releases and waives for itself and its subcontractors, materialmen, successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against Lee County, Florida (the "County"), its Board of County Commissioners, employees and agents relating in any way to the performance of the Agreement between Design-Build Firm and the County, dated \_\_\_\_\_, \_\_\_\_\_, for the period from \_\_\_\_\_ to \_\_\_\_\_.

(2) Design-Build Firm certifies for itself and its subcontractors, materialmen, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for which the County might be sued or for which a lien or a demand against any Payment Bond might be filed, have been fully satisfied and paid.

(3) Design-Build Firm agrees to indemnify, defend and save harmless the County, its Board of County Commissioners, employees and agents from all demands or suits, actions, claims of liens or other charges filed or asserted against the County arising out of the performance by Design-Build Firm of the Work covered by this Release and Affidavit.

(4) This Release and Affidavit is given in connection with Design-Build Firm's [monthly/final] application for payment No. \_\_\_\_\_.

DESIGN-BUILD FIRM:

\_\_\_\_\_

By: \_\_\_\_\_ (signature of the executive officer)

Its: \_\_\_\_\_ (title of the executive officer)

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

Witnesses

\_\_\_\_\_

[Corporate Seal]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

My Commission Expires: \_\_\_\_\_  
(Signature of Notary)

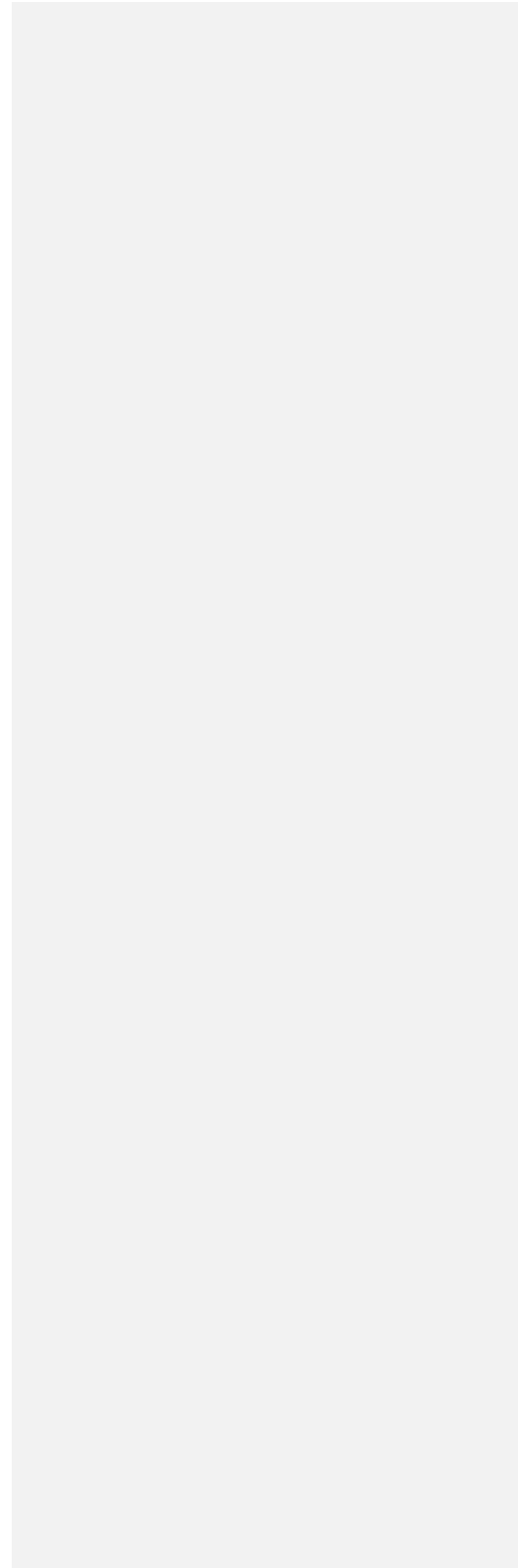
Name: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL) Notary Public, State  
of \_\_\_\_\_

No.: \_\_\_\_\_  
Commission

**EXHIBIT E**  
**FORM OF CHANGE ORDER**

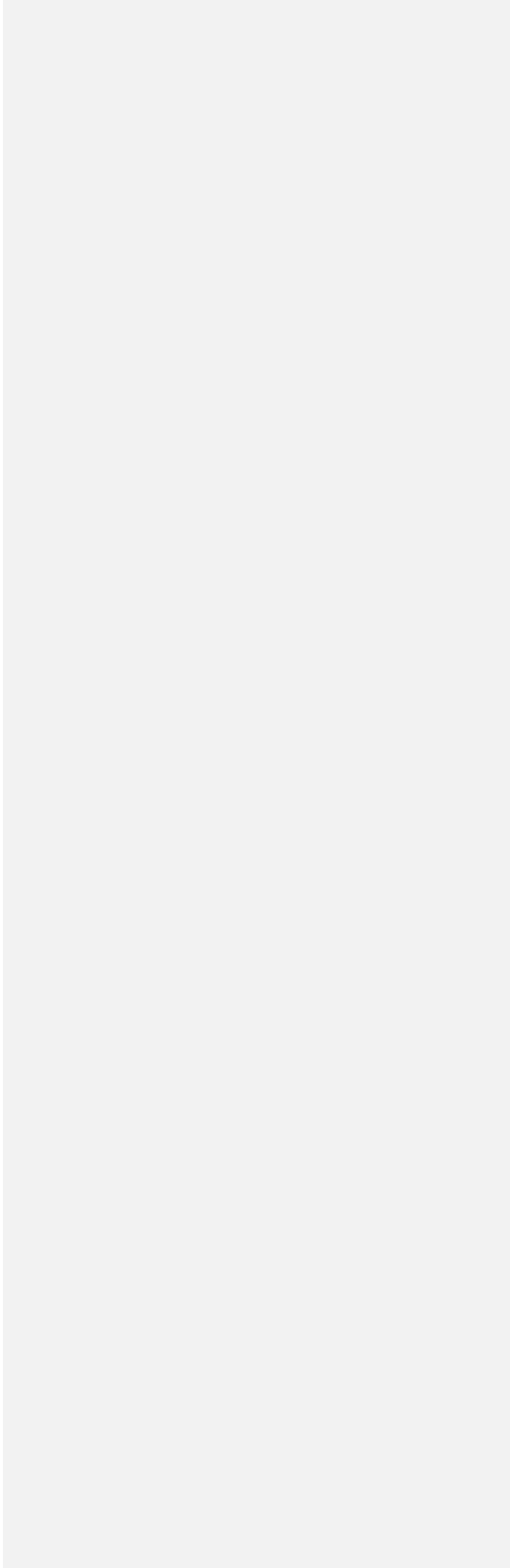
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**EXHIBIT F**  
**FORM OF OWNER DIRECT PURCHASES (IF APPLICABLE)**

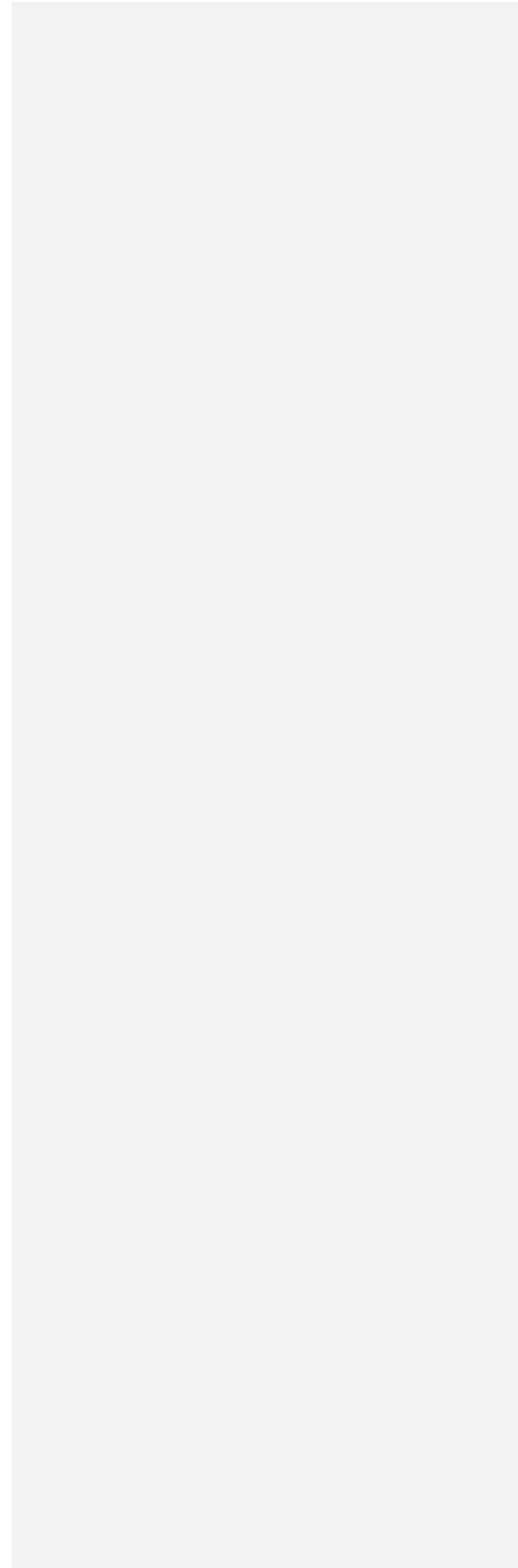
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**EXHIBIT "F"**  
**FORM OF OWNER DIRECT PURCHASES (IF APPLICABLE)**

[TO COME]

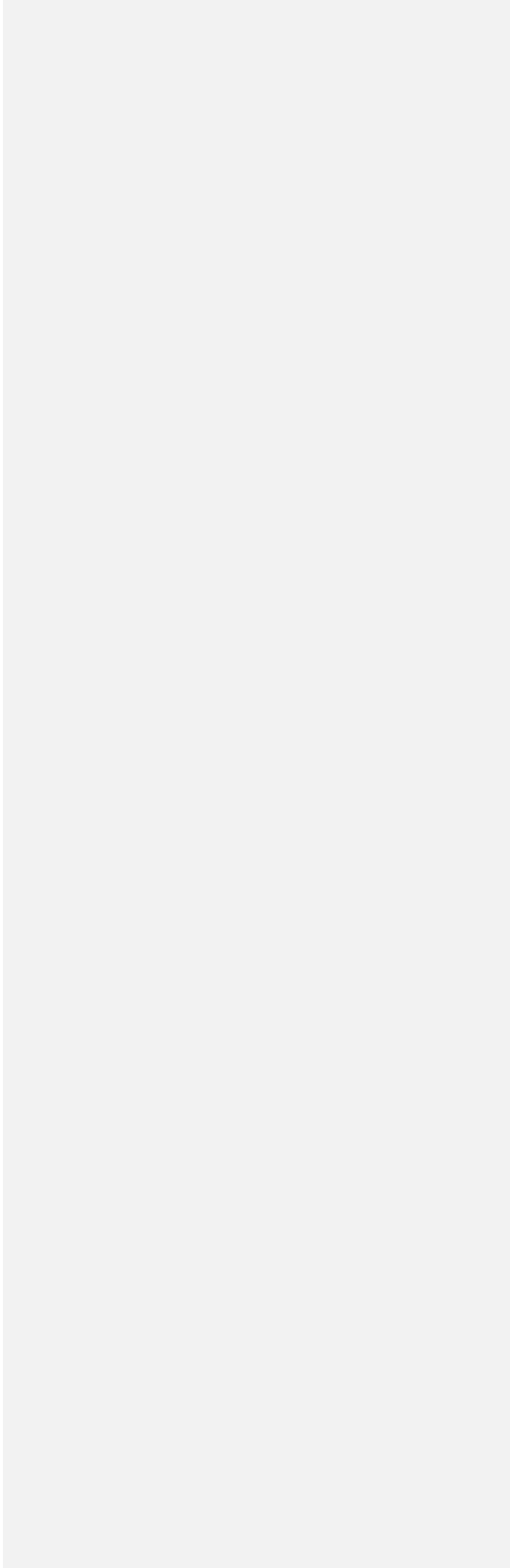
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**EXHIBIT G**  
**DESIGN CRITERIA PACKAGE**

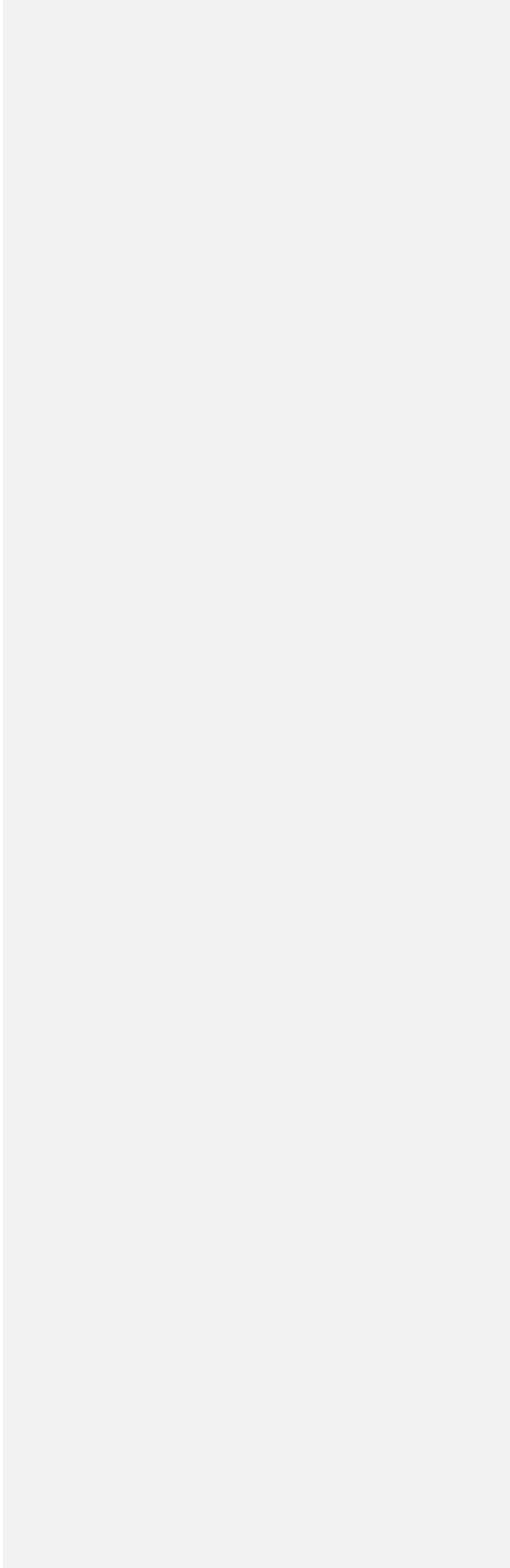
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**EXHIBIT G**  
**DESIGN CRITERIA PACKAGE**

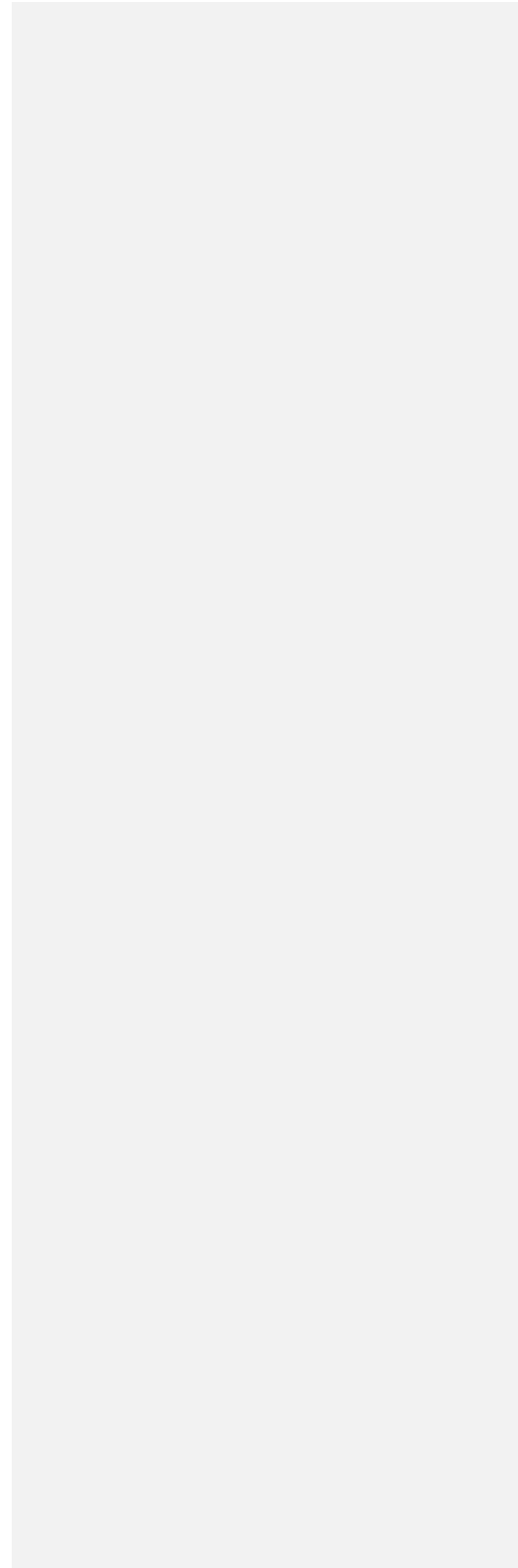
[TO COME]

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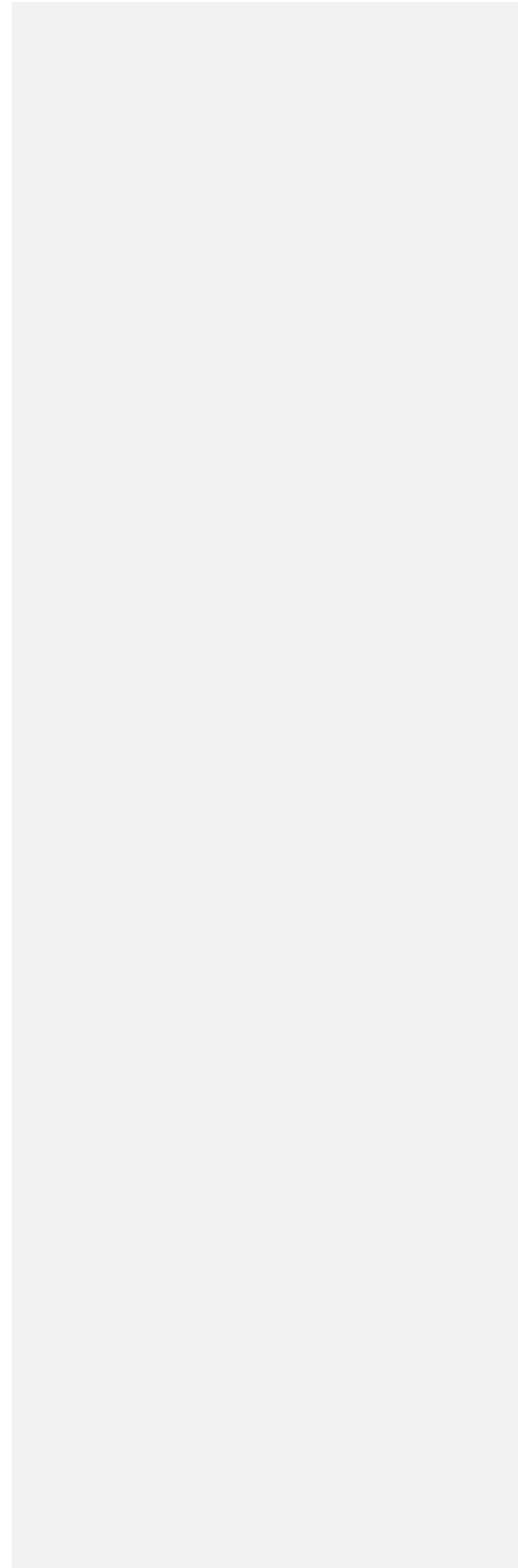
**EXHIBIT H**  
**DESIGN PHASE FEE PROPOSAL**

DRAFT



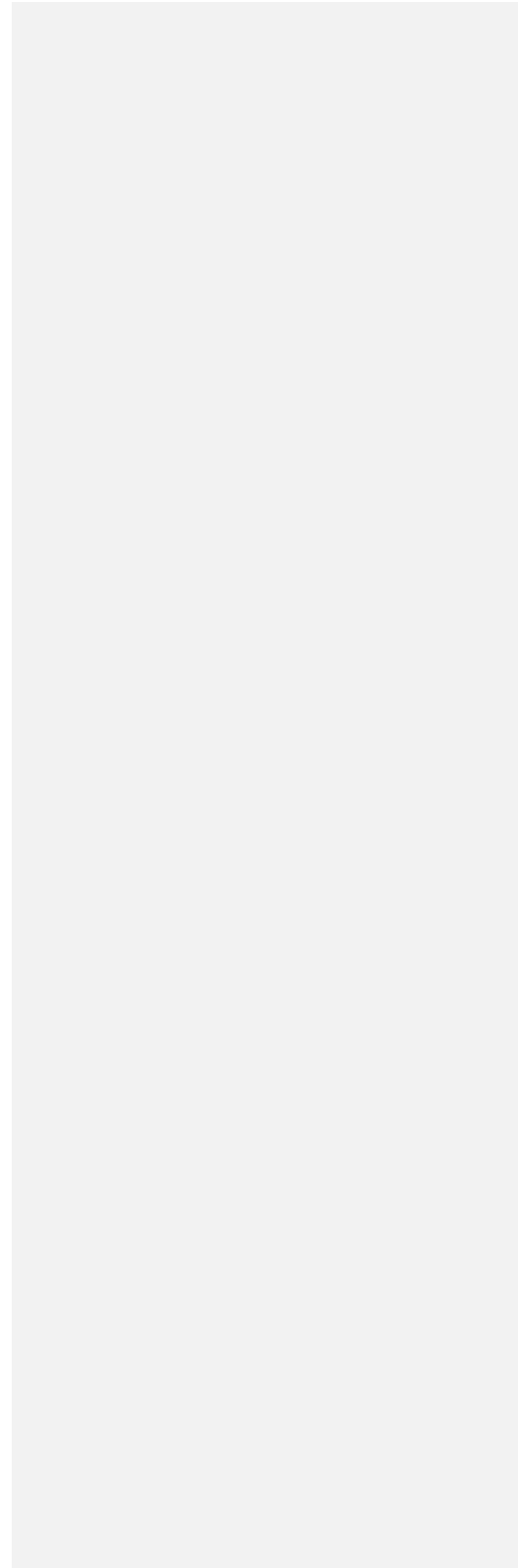
**EXHIBIT H**  
**DESIGN PHASE FEE PROPOSAL**  
[TO COME]

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**EXHIBIT I**  
**DESIGN-BUILD FIRM PROJECT PERSONNEL ROSTER**

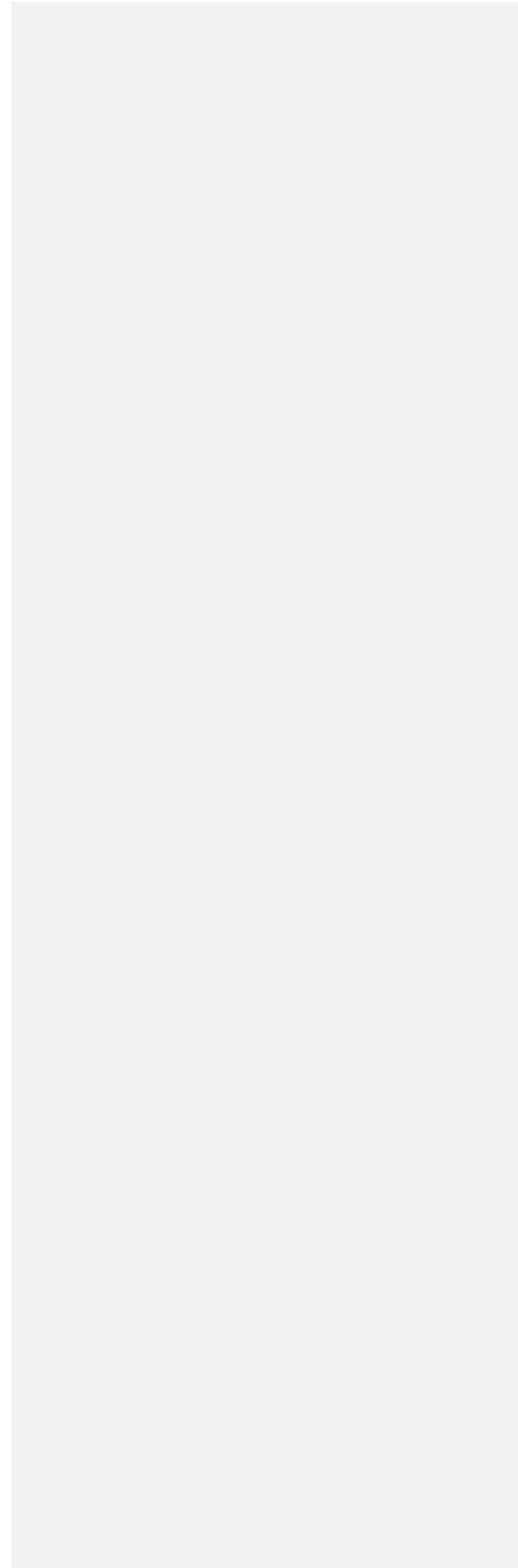
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**EXHIBIT "I"**  
**DESIGN-BUILD FIRM PROJECT PERSONNEL ROSTER**

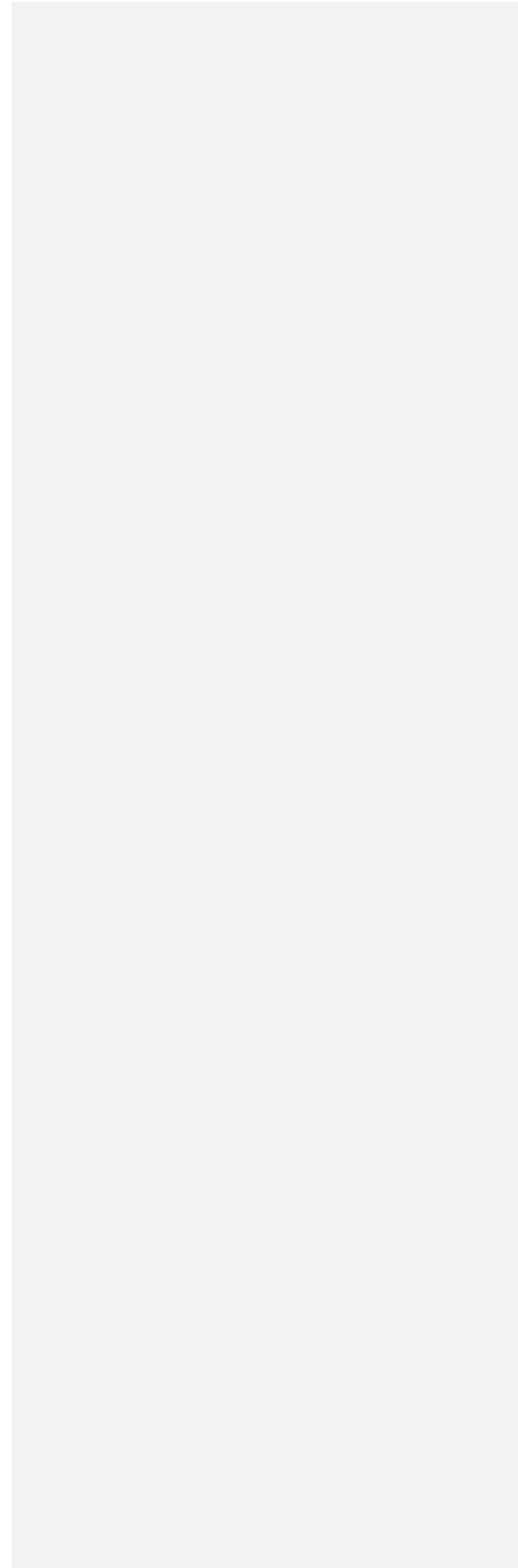
[TO COME]

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**EXHIBIT J**  
**SUPPLEMENTARY CONDITIONS**

DRAFT



**EXHIBIT "J"**  
**SUPPLEMENTARY CONDITIONS**  
[TO COME]

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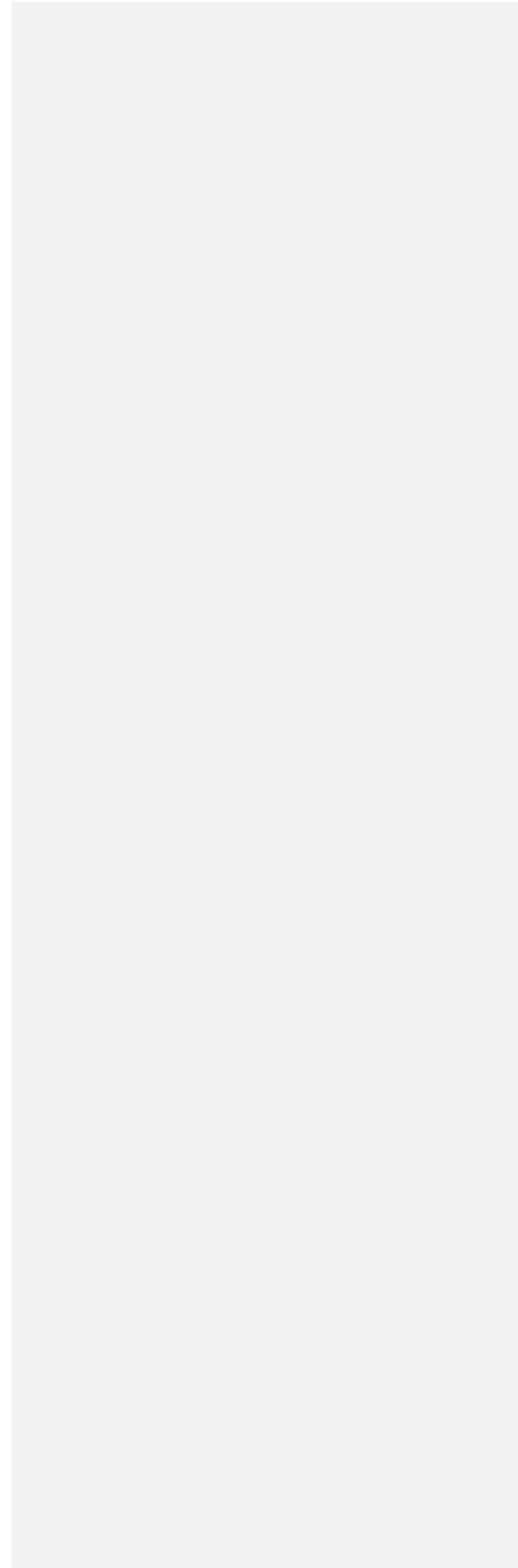




EXHIBIT "K"

DESIGN-BUILD FIRM BACKGROUND SCREENING AFFIDAVIT



DESIGN-BUILD FIRM  
BACKGROUND SCREENING  
AFFIDAVIT

Florida Statutes Chapter 435 governs required background screenings for any employees, Design-Build Firms, subcontractor, or agents of the Design Build Firm who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Design Build Firm is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

**Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit.** I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Design Build Firm will be solely responsible for complying with such legal requirements. Furthermore, the Design Build Firm shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

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

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_  
Name/Title \_\_\_\_\_

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following type of identification: \_\_\_\_\_

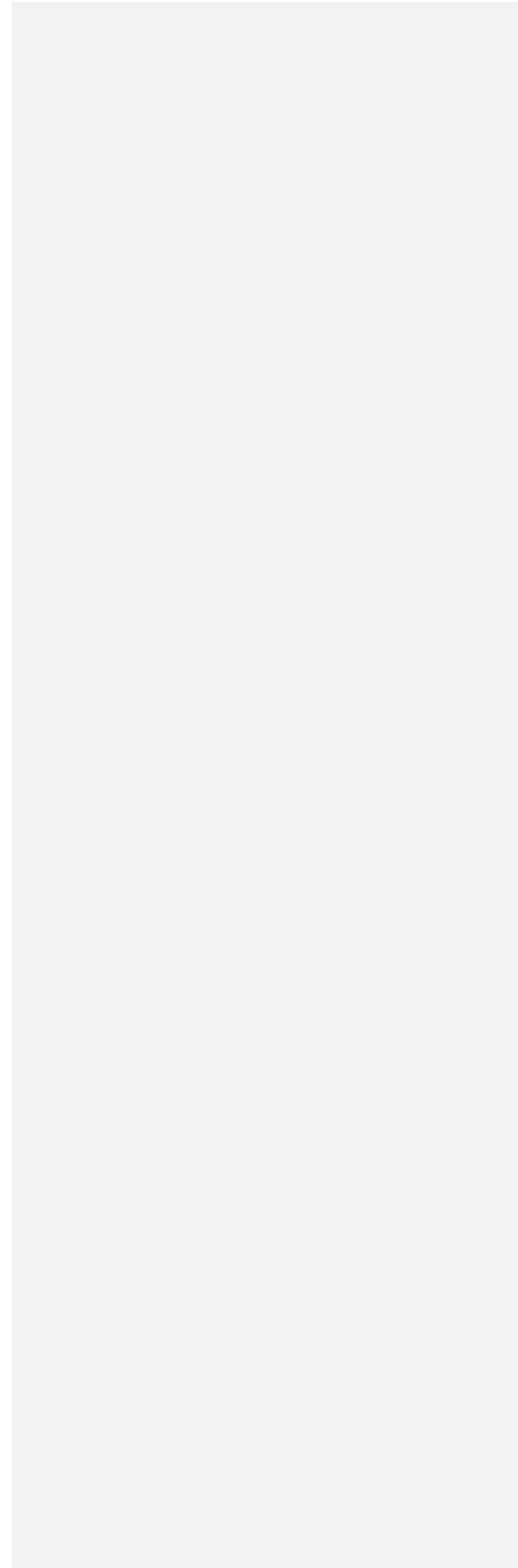
Type of Identification

[Stamp/seal required]

\_\_\_\_\_  
Signature, Notary Public

**EXHIBIT L**  
**WARRANTY BOND FORM**

DRAFT



**EXHIBIT "L"**

**WARRANTY BOND**

**WARRANTY BOND**

Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENT**, that we \_\_\_\_\_ with a place of business at \_\_\_\_\_ as principal (the "Principal"), and \_\_\_\_\_, a [corporation] qualified to do business in the State of New York, with a place of business at \_\_\_\_\_ as Surety (the "Surety"), are held and firmly bound unto \_\_\_\_\_ as Obligee (the "Obligee"), in the sum of *[insert the that is amount equal to ten percent (10%) of the Fixed Design-Build Price]* lawful money of the United States of America (the "Penal Sum"), to be paid to the Obligee, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

**WHEREAS**, the Principal has made a contract with the Obligee, bearing the date of \_\_\_\_\_, and entitled the Design-Build Agreement for Design-Build of a Single Stream Recyclables Processing System at the Materials Recovery Facility in \_\_\_\_\_ (the "Design-Build Agreement"), all in accordance with the terms of such Design-Build Agreement and which Design-Build Agreement by reference is made a part hereof; and

**WHEREAS**, under the Design-Build Agreement, the Principal is required to provide a Performance Warranty to \_\_\_\_\_ that the \_\_\_\_\_ Processing System and all components thereof meets the Technical Specifications and all applicable Minimum Performance Requirements and contract requirements contained in the Design-Build Agreement, and to produce a Warranty Bond to secure said warranty obligations.

**NOW THE CONDITIONS** of this obligation are such that if the Principal and all Subcontractors or suppliers under said Design-Build Agreement shall well and truly keep and perform all the undertakings, covenants, agreements, terms, and conditions of said Design-Build Agreement that relate to their warranty obligations on their parts to be kept and performed during the original term of said Design-Build Agreement and any extensions thereof that may be granted by the Obligee, with or without notice to the Surety, and shall also well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions relating to the warranty obligations of any and all duly authorized modifications, alterations, changes or additions to said Design-Build Agreement, then obligations of the Surety set forth herein shall become null and void, otherwise such obligations shall remain in full force and effect.

**WHENEVER** the Principal fails or refuses after demand by Obligee to meet any Performance Warranty obligation, which shall be determined by Obligee in its sole discretion, the Surety shall promptly perform said Performance Warranty obligation under the Design-Build Agreement in accordance with all of its terms and conditions. To the extent that the Surety elects to not to

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promptly perform the Design-Build Agreement, the Surety shall make payment to the Obligee up to the Penal Sum of this instrument, to fully satisfy said Performance Warranty obligations which have not been completed to the satisfaction of Obligee.

**IN THE EVENT** the Design-Build Agreement is abandoned by the Principal, or is terminated by the Obligee under the applicable provisions of the Design-Build Agreement, the Surety hereby further agrees that the Surety shall, if requested in writing by the Obligee, promptly take all such actions as are necessary to complete the Performance Warranty obligations of said Design-Build Agreement in accordance with its terms and conditions. To the extent that the Surety elects not to take all such actions as are necessary to complete the Performance Warranty obligations of said Design-Build Agreement, the Surety shall make payment to the Obligee up to the Penal Sum of this instrument.

**IN WITNESS WHEREFORE**, the Principal and Surety have hereto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL SURETY

\_\_\_\_\_  
\_\_\_\_\_

[Name and Seal] [Attorney-In-Fact][Seal]

\_\_\_\_\_  
\_\_\_\_\_

[Title] [Address]

\_\_\_\_\_

[Phone]

Attest: \_\_\_\_\_ Attest: \_\_\_\_\_