

LEE COUNTY UTILITIES

DESIGN-BUILD AGREEMENT

STIPULATED SUM
BETWEEN

THE BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

AND

FOR THE PROJECT KNOWN AS

Gateway WWTP Improvements Design Build

TABLE OF CONTENTS

Section	Title	Page
1	Recitals	2
2	Definitions	2
3	Initial Information	4
4	Licensure	4
5	Design-Builder's Services and Responsibilities	5
6	Owner's Responsibilities	15
7	Basis of Compensation	16
8	Schedule for Project	21
9	Changes in the Work	26
10	Direct Material Purchases	27
11	Correction of Work	27
12	Design-Builder's Warranty	28
13	Use of Design Materials	29
14	Patents, Trademarks, Copyrights	29
15	Bonds, Insurance and Waiver of Subrogation	30
16	Indemnification	36
17	Termination of Agreement	36
18	Notice of Claim and Waiver of Remedies	38
19	Diversity and Local Participation	39
20	Accuracy, Technical Sufficiency of Services Provided by Design-Builder	39
21	Design-Builder's Records and Owner's Right to Audit	41
22	Claims and Disputes	42
23	Owner's Separate Contractors	43
24	Special Provisions	43
25	Miscellaneous	45
26	Successors and Assigns	48
27	Statutory Notice	48

DESIGN-BUILD AGREEMENT
BETWEEN
OWNER AND DESIGN-BUILDER

THIS AGREEMENT is made and entered into this ____ day of _____, 2015, by and between Lee County, a political subdivision and charter county of the State of Florida acting by and through its Board of County Commissioners (“Owner”), and _____ (“Design-Builder”).

RECITALS:

WHEREAS, the Owner is the owner of a vacant parcel of real property located in Lee County, Florida, and more particularly described in Schedule “A” attached hereto and incorporated herein, on which Owner desires to develop, design and construct a _____ referred to herein as the Project; and

WHEREAS, the Owner desires to contract with a single party to develop, design and construct the Project; and

WHEREAS, the Design-Builder and its sub-consultants and subcontractors are licensed in the State of Florida to provide all architectural, engineering and general contracting services required to develop, design and construct the Project; and

WHEREAS, the parties have agreed that the work to be performed hereunder shall consist of a “turn-key” package including all architectural services, engineering services, general contracting services, equipment, coordination, construction, materials, contract administration, utilities connection, site work, interior work, and all such other work, services and materials as are necessary to construct the Project and bring the Project into full and complete operational status as of the date of its acceptance by the Owner; and

WHEREAS, Design-Builder is willing and able to provide any and all services, labor, materials and equipment necessary to construct the Project, to perform the Work and to bring the Project into full and complete operational status.

OPERATIVE PROVISIONS

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Design-Builder, intending to be legally bound, covenant and agree as follows:

1. Recitals. The recitals set forth above are true and correct and are incorporated herein by reference.

2. Definitions.
 - 2.1 Design-Builder. The Design-Builder is _____.

 - 2.2 Owner. The Owner is Lee County, Florida.

 - 2.3 Project. The Project consists of the development, design and construction of _____, located in Lee County, Florida. The Project encompasses _____

_____.

 - 2.4 Work. The Work shall consist of a “turn-key” package consisting of all architectural services, engineering services, general contracting services, equipment, coordination, construction, materials, contract administration, utilities connection, site work, interior work, and all such other work, services and materials as are necessary to construct the Project and bring the Project into full and complete operational status as of the date of its acceptance by the Owner.

 - 2.5 Project Manager. The person designated by the Owner to provide direct interface with the Design-Builder with respect to the Owner’s responsibilities.

 - 2.6 Permitting Authorities. Any governmental agencies having jurisdiction over the Project.

 - 2.7 Construction Documents. The term Construction Documents shall mean the Plans and Specifications setting forth in detail the requirements for the construction of the Project.

- 2.8 Contract Documents. The term Contract Documents shall mean this Agreement, the Design Criteria Package, the Plans, the Specifications and all amendments and modifications thereto.
- 2.9 Specifications. The Specifications shall consist of all specifications related to the Project prepared by Design-Builder, its sub-consultants and the Owner and listed in the Design Criteria Package, a copy of which is attached hereto as Schedule "H" and in the Design Deliverables.
- 2.10 Plans. The Plans shall consist of all drawings related to the Project prepared by the Design-Builder, its sub-consultants and the Owner listed in the Design Criteria Package, a copy of which is attached hereto as Schedule "H".
- 2.11 Design Deliverables. The Design Deliverables will provide the Construction Documents for the housing structure, the new piping to be installed from treatment facility to treatment facility and such other Project components as the Design-Builder deems necessary to render the Project complete, functional and fully operational.
- 2.12 Substantial Completion. The term Substantial Completion means satisfaction of all of the conditions set forth in Section 8 of this Agreement.
- 2.13 Substantial Completion Date. The Substantial Completion Date shall be that Substantial Completion Date specified in Change Order Number One.
- 2.14 Pre-Substantial Completion Punchlist. The Pre-Substantial Completion Punchlist means the list prepared by the Design-Builder identifying matters that remain to be completed in order that Substantial Completion can be declared by the Owner to have occurred.
- 2.15 Final Completion. The term Final Completion means satisfaction of all of the conditions set forth in Section 8 of this Agreement.
- 2.16 Final Completion Date. The Final Completion Date shall be that date specified in this Agreement.
- 2.17 Substantial Completion Punchlist. The Substantial Completion Punchlist means the list prepared by the Design-Builder in collaboration with the Owner after Substantial Completion has been achieved, identifying those matters which remain to be achieved between Substantial Completion and Final Completion in order that Final Completion can be declared by the

Owner to have occurred. The final form of the Substantial Completion Punchlist shall be approved by the Owner.

- 2.18 Effective Date of Agreement. The term Effective Date of this Agreement shall mean the last date on which this Agreement is executed by all parties signing the same.
- 2.19 Design Criteria Package. The Design Criteria Package shall mean the concise, performance-oriented drawings or specifications and equipment lists furnished to the Design-Builder by the Owner for the Project, and includes any Owner program requirements, project criteria, and performance requirements. A copy of the Design Criteria Package is attached hereto as Exhibit "H".
3. Initial Information. This Agreement is based on the following information and assumptions:
- 3.1 The Design Criteria Package prepared by the Owner for the Project.
- 3.2 The physical parameters of the Project are generally described in the definition of the Project set forth in paragraph 2.3 above and in Schedule "A" attached hereto.
- 3.3 The Project will be constructed in accordance with the milestone project schedule attached hereto as Schedule "B".
4. Licensure. The Design-Builder shall be a partnership, corporation or other legal entity, which is certified to engage in contracting under the provisions of Section 489.119, Florida Statutes, architecture under the provisions of Section 481.219, Florida Statutes, or engineering under the provisions of Section 471.023, Florida Statutes. If the Design-Builder does not possess licenses under Sections 489.119, 481.219 and 471.023, Florida Statutes, the Design-Builder shall make appropriate arrangements so that it can legally deliver to the Owner all general contracting, engineering and architectural services required to develop, design and construct the Project. The Design-Builder shall observe and abide by the applicable laws, rules and regulations of all Permitting Authorities.
5. Design-Builder's Services and Responsibilities.
- 5.1 Design Services.
- 5.1.1 The Design-Builder shall review all laws, regulations and rules applicable to the development, design and construction of the

Project, correlate all such rules, regulations and laws with the Owner's program requirements, and advise the Owner if any program requirements may cause a violation of such rules, regulations and/or laws.

- 5.1.2 The Design-Builder shall define the preliminary building plans and configuration for the Project, setting parameters for quality and types of systems, types of materials, and the specification and location of finishes to be included in the Project cost model. The Design-Builder shall coordinate and direct all consulting firms, including Owner's separate consulting firms, so as to provide those services necessary to study the site, including survey, soils, environmental analysis, etc., as required.
- 5.1.3 If requested by the Owner, the Design-Builder shall assume primary responsibility for coordinating with the Owner's equipment vendors so as to ensure that the preliminary building plans and configuration of the Project accommodates the needs and requirements of the existing and new equipment which is to be installed in the Project.
- 5.1.4 The Design-Builder shall assist the Owner in obtaining appropriate zoning and land use related permits for the Project and shall provide coordination of Owner's permitting activities among the various Permitting Authorities having jurisdiction over the Project.
- 5.1.5 The Design-Builder shall submit 30%, 60% and 100% complete Construction Documents for review and approval by the Owner. The Construction Documents shall include technical drawings, equipment lists, schedules, diagrams, and specifications, setting forth in detail the requirements for the construction of the Work, and shall:
 - 5.1.5.1 Provide information necessary for the use of those in the building trades; and
 - 5.1.5.2 Include documents customarily required for the approval of Permitting Authorities.

The construction documents to be prepared by the Design-Builder shall be prepared in accordance with the applicable laws, codes, standards, rules and regulations currently in effect as of the date this Agreement is submitted to the Owner. Any subsequent changes in

these laws, codes, standards, rules and/or regulations requiring modification of the construction documents shall be incorporated by change order issued pursuant to the provisions of Section 9 hereof.

5.1.6 The Design-Builder shall assist the Owner in filing documents required to obtain all necessary approvals of Permitting Authorities having jurisdiction over the Project.

5.1.7 The Design-Builder shall coordinate the design and construction requirements with any Permitting Authorities, utilities and all other persons either involved in the infrastructure improvements or otherwise affected by the design and construction requirements arising under the Contract Documents.

5.2 Construction Services.

5.2.1 The Design-Builder shall provide Project management to ensure that the quality objectives of the Owner are met.

5.2.2 The Design-Builder shall provide, or cause to be provided, and shall pay for all design services, construction services, labor, materials, equipment, tools, construction equipment, and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

5.2.3 The Design-Builder shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures.

5.2.4 The Design-Builder shall develop and implement a comprehensive safety program for the Project to meet all applicable federal, state and local safety requirements, including provisions to be included in the Contract Documents. This will include an aggressive program for ensuring safety of all persons and property affected by the Work. The Design-Builder shall also abide by safety related Standard Operating Procedures of the Owner.

5.2.5 The Design-Builder shall develop, implement and maintain an effective quality control plan and procedures to ensure the materials

furnished and quality of work performed are in accordance with the Contract Documents.

5.2.6 The Design-Builder shall be responsible and accountable for the quality control of the Work, including quality control testing and inspection. The Design-Builder shall supervise the work of all subcontractors, professionals and sub-consultants reviewing design and construction means, methods, techniques, sequences and procedures, providing instructions to each when their work does not conform to the requirements of the Contract Documents for the Project. The Design-Builder shall continue to exert its influence and control over each professional, sub-consultant and subcontractor to ensure that corrections are made in a timely manner so as to not effect the efficient progress of the Work. Should disagreement occur over the acceptability of Work and its conformance with the requirements of the Contract Documents for the Project, the Owner shall be the final judge of performance and acceptability, and non-compliant Work shall be corrected accordingly. The Project Manager or the Owner may, in its sole discretion, employ an independent firm for verification testing of the quality control testing. The Design-Builder will exercise reasonable care and diligence in discovering and promptly reporting to the Owner any defects or deficiencies in the Work. The Design-Builder shall establish Project schedules and schedule milestones and review the progress schedules submitted by subcontractors, professionals and sub-consultants in order to ensure proper completion of the Work. The Design-Builder shall submit all testing to the Owner within seventy two hours of issuance.

5.2.7 The Design-Builder shall submit to the Owner all approved shop drawings within 72 hours of approval.

5.2.8 The Design-Builder shall be responsible for and shall coordinate with Owner's equipment vendors the relocation and installation of all existing and new equipment into the facility.

5.2.9 The Design-Builder warrants to the Owner that materials and equipment incorporated in the Work will be new unless otherwise specified, and that the Work will be of good quality, free from faults and defects, and in conformance with the Construction Documents. Work not conforming to the requirements of the Construction

Documents shall be corrected in accordance with the provisions of the Construction Documents.

- 5.2.10 The Design-Builder shall be responsible to Owner for acts and omissions of the Design-Builder's employees and parties in privity of contract with the Design-Builder to perform a portion of the Work, including their agents and employees.
- 5.2.11 The Design-Builder shall keep the premises free from accumulation of waste materials or rubbish caused by the Design-Builder's operations. At the completion of the Work, the Design-Builder shall remove from and about the Project the Design-Builder's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.
- 5.2.12 The Design-Builder shall assist with the coordination and installation of all Owner-provided furniture, fixtures and equipment.
- 5.2.13 With the Owner's personnel, direct the check-out of utilities, operations, systems and equipment for readiness and assist in their initial startup and testing by the subcontractors and sub-consultants.
- 5.2.14 The Design-Builder shall provide consultation and project management to facilitate the Owner's occupancy and provide transitional services to get the Work, as completed by the Design-Builder or its subcontractors or sub-consultants, "on-line" in such conditions as will satisfy the Owner's operational requirements.
- 5.2.15 Daily Logs – Maintain a log and electronic database of daily activities for the Project including, at a minimum, the following information in a bound log: the day, date, weather conditions and how any weather conditions effect the progress of the Work; time of commencement of work for the day; the work being performed; material, labor, personnel, equipment and subcontractors at the Project site; visitors to the Project site, including representatives of Owner, Project Manager and Engineer; any special or unusual conditions or occurrences encountered; and the time of termination of work for the day. The log and database shall be available to the Owner, Project Manager and Engineer and any inspectors upon request.
- 5.2.16 Project Rosters – Maintain for the Project a roster of companies on the Project with names and telephone numbers of key personnel, and

provide a means of identifying workers on site in accordance with the approved safety plan.

5.2.17 Job Meetings – Hold weekly progress and coordination meetings with the Project Manager to provide for an easy flowing project and orderly progress of the Work, including implementation of procedures, and to ensure timely submittals and expeditious processing of approvals and return of shop drawings, samples, etc. The Design-Builder shall advise the other Project Team members of their required participation in the meeting or inspection, giving each approximately one weeks’ notice, unless such notice is made impossible by conditions beyond the Design-Builder’s control. The Design-Builder shall hold job-site meetings at least once each month with Project Team.

5.2.18 Project Team Meetings - The Design-Builder, Project Manager and Engineer shall meet regularly as the progress of the Project requires, but in no case less than every two weeks for the Project, to review and agree upon the work performed to date and to establish the controlling items of the work for the next two weeks.

5.2.19 Shop Drawing Submittals/Approvals - Work with the Project Team to establish and implement procedures for expediting and processing all shop drawings, samples, submittals and detailed plans/drawings, and other documents, maximizing the use of electronic plan media to the greatest extent possible, for submittal and transmittal to the Engineer of such plans for action, and closely monitor their submittal and approval process. The Design-Builder shall be responsible for the initial review and appropriate circulation of submittals.

5.3 Project Management Services.

5.3.1 Administrative Records – The Design-Builder shall maintain at the jobsite, unless agreed to otherwise by the Project Manager, on a current basis, files and records such as, but not limited to, the following:

- Punchlists;
- Cost proposal requests;

- Bid analysis/negotiations/award information;
- Contract/purchase orders w/ changes;
- Material equipment;
- Delivery logs;
- Payment records;
- Transmittal records;
- Inspection records;
- EADOC schedule and updates;
- Suspension (tickler) files of outstanding requirements;
- EEO/Davis Bacon reports;
- DBE/MBE reports with payment records;
- Shop plan submittals/approval logs;
- Contract plans and specifications with addenda;
- Warranties and guarantees;
- Cost accounting records;
- Payment record requests;
- Subcontractor pay exception reports;
- Meeting minutes;
- Cost estimates;
- Bulletin quotations;
- Lab test reports;

- Insurance certificates and bonds;
- Technical standards;
- Design handbooks;
- “As-built” marked prints;
- Operating and maintenance instructions;
- Daily progress reports;
- Project correspondence files;
- Project manuals.
- Agreements with subcontractors

All administrative records shall be available to the members of the Project Team for reference or review.

5.3.2 The Design-Builder shall assist the Owner’s staff and reasonably cooperate with the Owner’s legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

5.3.3 The Design-Builder shall implement suitable management systems and work plans for the Project relative to managing and controlling the Work.

5.3.4 The Design-Builder shall develop and implement a crisis management plan describing a general approach to and contacts in case of crisis situations, e.g. a hurricane or other adverse weather event, etc. that permits, to the fullest extent possible, uninterrupted work or prompt resumption of the work.

5.3.5 The Design-Builder shall develop and implement, in consultation with the Owner, an approach to labor relations for the Project that assures, to the fullest extent possible, the uninterrupted completion of the Project in accordance with the schedule and budget.

- 5.3.6 The Design-Builder shall develop, implement and maintain a comprehensive plan to protect the Project site and materials stored onsite and off-site against theft, vandalism, fire and accidents, etc. as required by job and location conditions. Mobile equipment and operable equipment at the site, and hazardous parts of new construction subject to mischief, shall be locked or otherwise made inoperable or protected when unattended.
- 5.3.7 The Design-Builder shall assist the Owner, as requested, in developing and implementing a comprehensive public relations plan, including community outreach efforts to inform local, small and medium sized businesses of potential impacts of the construction on their operations. The Design-Builder shall assist the Owner in coordination with other entities impacted by the Project.
- 5.3.8 The Design-Builder shall be responsible for and shall coordinate, schedule, and conduct all performance testing as specified in the Design Criteria, Technical Specifications, or other contract documents. Coordinate with Owner to witness the performance testing. The Design-Builder shall summarize performance test results in a report, demonstrating the results meet the performance criteria specified. The Design-Builder is responsible for all testing and inspection costs.
- 5.3.9 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.
- 5.3.10 The Design-Builder shall pay all sales taxes, consumer, use, and similar taxes which were in effect as of the making of this Agreement. The Design-Builder shall not be responsible for paying any impact fees, concurrency fees, and/or area assessments which shall remain the sole responsibility of the Owner.
- 5.3.11 The Design-Builder shall give notices and comply with laws, ordinances, rules, regulations and lawful order of Permitting Authorities relating to the Project.
- 5.3.12 The Design-Builder shall pay royalties and license fees. The Design-Builder shall defend suits or claims for infringement of patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for such loss when a particular design process or product of a particular

manufacturer is required by the Owner. However, if the Design-Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Design-Builder shall be responsible for such loss unless such information is promptly given to the Owner.

5.3.13 The Design-Builder shall maintain in good order at the site one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other Modifications, marked currently to record changes made during construction. The Design-Builder shall be responsible for preparing As-Built Drawings and Record Drawings in accordance with Lee County Utilities Design Manual. These shall be delivered to the Owner upon completion of the design and construction and prior to final payment.

5.3.14 The Design-Builder shall review the completed as-built plans and ascertain that all data furnished in the plans are accurate and truly represent the Work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled waterlines, inverts, etc. are involved as part of the Work, the Design-Builder shall furnish true elevations and locations, all properly referenced by using the original benchmark used for the Project. The Design-Builder shall be responsible for preparing As-Built Drawings and Record Drawings in accordance with Lee County Utilities Design Manual.

5.3.15 The Design-Builder shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The Design-Builder shall coordinate and provide Owner all operational training in equipment use, process units, and systems.

5.3.16 In addition to any other services to be performed during the post-construction phase of the Project, as may be specified elsewhere in this Agreement, the Design-Builder shall perform such other services relating to close out the Project as requested by the Owner or as set forth in the Contract Documents.

5.3.17 The Design-Builder shall prepare and submit to the Owner, during the design and construction of the Project, monthly progress reports of the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably

acceptable to the Owner. Such reports shall be furnished at the time of submission of each application for payment. As part of such report, the Design-Builder shall provide an updated schedule, utilizing a critical path scheduling method, indicating the progress which has been made, by reference to the CPM and specifically whether the Work is on schedule or behind schedule and the actions being taken to correct any schedule slippage. The monthly report shall also set forth the Design-Builder's projected progress for the following month.

5.3.18 The Design-Builder shall secure and transmit to the Owner, through the Project Manager, all required guarantees, affidavits, releases, bonds and waivers, manuals, record plans and maintenance books for the Project.

6. Owner's Responsibilities. The Owner's responsibilities in connection with the Project shall be as follows:

6.1 The Owner shall provide full information in a timely manner regarding its requirements for the Project and any other relevant information regarding its requirements for the Project as may be requested by the Design-Builder.

6.2 The Owner shall designate a Project Manager authorized to act on the Owner's behalf with respect to the Project. The Owner, through the Project Manager, shall examine documents submitted by the Design-Builder and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the Work.

6.3 The Owner may, but shall not be required, to appoint an on-site Project representative to observe the Work.

6.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections, and shall pay the fees for such permits, licenses and inspections if the cost of such fees is not identified as being included in the Design-Builder's Proposal.

6.5 The Owner shall furnish a legal description and a certified boundary survey, if available, of the site and all available information concerning utility services and lines, both public and private, above and below grade, including inverts and depths. Design-Builder shall be entitled to rely upon said survey work and to the extent errors associated with the survey work necessitate additional cost, the additional cost shall be borne by the Owner.

- 6.6 The Owner shall furnish such environmental services as are reasonably deemed necessary by the Design-Builder. The Owner shall bear responsibility for any pre-existing environmental conditions associated with the real property more particularly described in Schedule "A" attached hereto. All costs associated with remediating or otherwise addressing pre-existing environmental conditions shall be the financial responsibility of Owner and shall not be considered part of the Cost of the Work. The Design-Builder shall be responsible for insuring that environmental contamination of the Project site does not occur during the term of this contract. To the extent that environmental contamination occurs during the term of this contract, the Design-Builder will bear financial responsibility for all costs associated with remediating or otherwise addressing the same to the satisfaction of the Owner.
- 6.7 The Owner shall furnish readily available geotechnical or other laboratory or on-site tests, inspections and reports as required by law.
- 6.8 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Construction Documents, the Owner shall give prompt written notice thereof to the Design-Builder.
- 6.9 The Owner shall furnish required information and services and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the design and construction.
- 6.10 The Owner shall communicate with subcontractors and sub-consultants only through the Design-Builder.

7. Compensation.

- 7.1 Contract Sum. The Owner shall pay to the Design-Builder in full and complete satisfaction of all services, materials and equipment furnished by Design-Builder under the terms of this Agreement the lump sum of _____ and No/100 Dollars (\$_____).
- 7.2 Discounts and Penalties. All discounts for prompt payment shall accrue to the Owner to the extent the payment is made directly by the Owner or from a fund made available by the Owner to the Design-Builder for such payments. To the extent the payment is paid with funds of the Design-Builder, all cash discounts shall accrue to the Design-Builder. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Contract Sum. All penalties

incurred due to fault of the Design-Builder for late payment of cost of the project will be paid by the Design-Builder.

7.3 Owner Contingency. The Contract Sum includes Owner Contingency, which shall be controlled by the Owner and available to defray expenses attributable to unforeseen circumstances relating to the construction and for added scope by the Owner. The Design-Builder will be required to obtain the Owner's approval and to furnish documentation evidencing expenditures charged to the Owner's Contingency prior to seeking the release of contingency funds from the Owner. Documentation for use of the Owner's Contingency shall be determined by the Project Team, included in the Project Manual and reported monthly by the Design-Builder. Any funds which remain in the Owner's Contingency at the conclusion of the Project shall belong to the Owner.

7.4 Payments.

7.4.1 Schedule of Values. The Design-Builder shall submit to the Owner a Schedule of Values for the various portions of the Work aggregating the Contract Sum, divided so as to facilitate progress payments, and to the fullest practical extent based on unit prices ("Schedule of Values"). The Schedule of Values shall be in a form specified and approved by the Owner. The Schedule of Values shall be used as the basis of Design-Builder's progress payments.

7.4.2 Applications for Payment. The Design-Builder shall deliver to the Owner an application for payment covering the cost of the Work and the fee applicable to the Work performed during such month. The Owner shall make payment to the Design-Builder not later than twenty (20) days after delivery of the application for payment to the Owner. With each application for payment, the Design-Builder shall submit such evidence as may be necessary, in the sole opinion of the Owner, to demonstrate costs incurred or estimated to be incurred on account of the cost of the Work during such month and the percentage of completion of each category of work. The Owner shall pay the Design-Builder the actual cost of the Work through the period covered by the application for payment less retainage as set forth in paragraph 7.5 below, provided that the payment amount before retainage will not exceed the percentage of completion of the Work multiplied by the Contract Sum, as set forth in the Schedule of Values.

7.4.3 Payment for Materials Stored Off Site. Provided the Owner has expressly approved such payment in writing, payment may, in the Owner's sole discretion, be made for materials and equipment suitably stored off site provided the Design-Builder furnishes to the Owner the following:

- (a) The location of the materials and equipment;
- (b) Evidence that title to the materials and equipment will pass to the Owner upon payment therefore;
- (c) Evidence that the materials and equipment are adequately insured; and
- (d) Such other matters as the Owner may reasonably request in order to protect its interest.

7.4.4 Certification and Release Documentation. In each application for payment, the Design-Builder shall certify that:

There are no known valid construction liens or bond claims outstanding at the date of this application, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of this Application for Payment, and that there is no known basis for the filing of any construction liens or bond claims on account of the Work, and that waivers from all subcontractors and sub-consultants and materialmen furnishing labor and materials in connection with the Work have been obtained in such form as to constitute an effective waiver of lien or bond claim under the applicable laws of the State of Florida. The Design-Builder further certifies that the Work for which this application for payment is being submitted has been performed in accordance with all applicable building codes, the Specifications and Plans for the Project, and that the Design-Builder knows of no deviations or defects relating to the work performed by it or its subcontractors or sub-consultants.

Concurrent with each application for payment, the Design-Builder shall execute and furnish a waiver of lien rights and claims current to the effective date of such application and a consent of surety from the surety issuing the Public Construction Bond furnished by the Design-Builder in connection with the Project. The waiver of lien rights and claims shall be in that form attached hereto as Schedule "C". The Design-Builder shall also deliver with each application and as a condition to payment thereof,

waivers of lien and bond claims for each subcontractor who has provided labor, services, or materials through the effective date of the previous application for payment.

7.4.5 Final Payment. Final payment, including retainage amounts, shall be made by the Owner to the Design-Builder on or about thirty (30) days following Final Completion of performance of all Work and the Design-Builder's submittal of a final application of payment therefore and final contractor's affidavit, provided that the Design-Builder has fully performed its obligations hereunder. In this regard, it is further agreed that the final application for payment shall not be made until the Design-Builder has fully and finally completed all work, including punchlist items, and delivers to the Owner a complete release of all valid liens, bonds and other claims arising or which could arise out of this Agreement in the form attached hereto as Schedule "D". The acceptance of final payment by the Design-Builder shall constitute a waiver of all claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of the final application for payment.

7.4.6 Payment is Not Acceptance. The payment of any application for payment by Owner, including the final application for payment, does not constitute approval of, or acceptance of that part of the Work to which such payment relates nor shall such payment relieve the Design-Builder of any of its obligations nor constitute a waiver of any claim which the Owner may then have or thereafter discover.

7.4.7 Any part of such payment is attributable to Work which is defective or not performed in accordance with the requirements of this Agreement;

7.4.8 If the Owner, in good faith, determines that the portion of the Contract Sum then remaining unpaid will not be sufficient to properly complete the Work, whereupon no additional payments will be due the Design-Builder hereunder unless and until the Design-Builder, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Sum then remaining unpaid is determined by the Owner to be sufficient to complete the Work.

7.4.10 Damage to the Owner or Owner's separate contractor caused by the fault or neglect of the Design-Builder to the extent not covered by insurance; or

7.4.10 If the Owner makes a good-faith determination that the Design-

Builder has not or will not meet the Substantial Completion Date unless the Design-Builder accelerates its Work progress in a manner so as to meet the Substantial Completion Date.

7.5 Retainage.

7.5.1 Ten percent (10%) retainage shall be withheld from all progress payments made to the Design-Builder until the Work is fifty percent (50%) complete and, thereafter, the retainage amount on subsequent progress payments shall be reduced to five percent (5%).

7.5.2 The retainage held hereunder shall not be paid, if at all, to the Design-Builder until thirty (30) days after the Final Completion Date.

7.5.3 The Design-Builder shall be entitled to apply to the Owner for disbursement of fifty percent (50%) of the retainage held by the Owner when the Work is fifty percent (50%) complete. Notwithstanding the foregoing, the Owner shall not be obligated to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to Section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the Owner.

7.6 Interest on Unpaid Sums. In the event of a bona fide dispute by the Owner of any sums for which payment has been requested, no interest shall be due on such disputed sums until such dispute is resolved, provided that all undisputed sums shall have been paid in due course. If the Owner does not pay the Design-Builder any undisputed sum as provided for herein, interest shall accrue on said payments at a rate of four percent (4%) per annum.

7.7 Florida Prompt Payment Act. The Design-Builder agrees and acknowledges that the limited portion of the Florida Prompt Payment Act, as set forth in Section 218.735(6), Florida Statutes, pertaining to “timely payment for purchase of construction services” is incorporated by reference into this Agreement with respect to the Design-Builder’s obligation to pay subcontractors and sub-consultants. Consistent with Section 218.735(6), Florida Statutes, when the Design-Builder receives payment for labor, services or materials furnished by any subcontractor, supplier or sub-consultant hired by the Design-Builder, the Design-Builder must submit payment to those subcontractors, suppliers and/or sub-consultants within fifteen (15) days after Design-Builder’s receipt of payment. Design-Builder

will flow this requirement to its sub-subcontractors and sub-sub-consultants such that when a sub-contractor receives payment from the Design-Builder for labor, services or materials furnished by sub-subcontractors or sub-sub-consultants hired by the subcontractor or sub-consultant, the subcontractor or sub-consultant will remit payment due to those sub-subcontractors and sub-sub-consultants within fifteen (15) days after the subcontractor's and sub-consultant's receipt of payment.

- 7.8 Joint Checks. The Owner reserves the right to issue joint checks to the Design-Builder and its sub-subcontractors or sub-sub-consultants, or, to make direct payments to the Design-Builder's subcontractors or sub-consultants if, in the Owner's sole judgment, it is necessary to do so in order to ensure payment to said parties. The amounts of said joint or direct checks shall be deducted from the Contract Sum.

8. Schedule for Project.

- 8.1 A design and construction schedule shall be mutually agreed upon by the parties and shall be delivered to Owner with the execution of this Agreement. The design and construction schedule for the Project shall be in a critical path method scheduling format. The design schedule shall reflect 30%, 60% and 100% design completion, and necessary permitting. The construction schedule for the Project shall reflect the Substantial Completion Date, as well as the Final Completion Date.

- 8.2 By accepting the construction schedule for the Project, the Owner shall not be deemed to have exercised control over, or approval of design functions or construction means, methods, or sequences, all of which remain the responsibility and obligation of the Design-Builder in accordance with the terms of the Construction Documents and this Agreement. Furthermore, the construction schedule accepted by the Owner for the Project shall not operate to limit or restrict any of the Design-Builder's obligations under the Construction Documents and this Agreement, nor relieve the Design-Builder from the full, faithful, and timely performance of such obligations in accordance with the terms of the Construction Documents and this Agreement. The Owner shall be advised whenever there are material modifications or revisions to the activities, commencement and completion dates of activities, and the sequencing of activities depicted on the construction schedule for the Project. Updates to the construction schedule shall be provided to the Owner on a monthly basis, or, more frequently, as required by the conditions or progress of the Work, or as may be requested by Owner.

8.3 In the event of an inexcusable delay by the Design-Builder in performing Project services, the Owner may direct, in writing, that the Work be accelerated by means of overtime, additional crews, or additional shifts. All such acceleration shall be at no cost to Owner. In the event of an excusable delay by the Design-Builder, Owner may similarly direct, in writing, acceleration and Design-Builder agrees to perform the same on the basis of reimbursement of its direct costs, i.e., the premium portion of overtime pay, additional crew costs, shift, or equipment costs, or such other items of cost requested in advance by the Design-Builder and approved in writing by the Owner, plus a fee of five percent (5%) for overhead and profit on the Design-Builder's Work. The Design-Builder however expressly waives any other compensation therefore, including damages for delay. All such requests and authorizations for acceleration by the Owner shall be made by Change Order as provided in Article 9 of this Agreement. In the event of any acceleration requested pursuant to this paragraph, the Design-Builder shall promptly provide a plan, including its recommendations, for the most effective and economical acceleration. Any acceleration called for hereunder shall be subject to the Change Order procedure set forth in Section 9 hereof. An excusable delay is a delay caused by the neglect of the Owner, changes in the Work, strikes, lockouts, embargos, fires, unavoidable casualties, adverse weather conditions not reasonably anticipatable, national emergency, or by any other causes which the Design-Builder cannot reasonably control or circumvent. Any delay other than one falling within the definition of excusable delay shall be considered an inexcusable delay for purposes of this Agreement.

8.4 NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE DESIGN-BUILDER SHALL NOT BE ENTITLED TO RECOVER ANY MONETARY DAMAGES IT MIGHT SUSTAIN AS A RESULT OF ANY DELAY CAUSED THE DESIGN-BUILDER BY ANY ACT OF THE OWNER, ANY SEPARATE CONTRACTOR EMPLOYED BY THE OWNER, ANY EQUIPMENT VENDOR UTILIZED BY THE OWNER OR ANY OTHER CAUSES WHATSOEVER. DESIGN-BUILDER FURTHER AGREES THAT IT SHALL MAKE NO CLAIM FOR COMPENSATION FOR SUCH DELAY AND WILL ACCEPT IN FULL SATISFACTION FOR SUCH DELAYS ANY EXTENSIONS OF TIME WHICH ARE GRANTED TO IT BY THE OWNER.

8.5 Substantial Completion. For purposes of this Agreement, Substantial Completion of the Project shall be deemed to have occurred when:

- 8.5.1 All operational testing, if any, whether by subcontractor, Design-Builder or both, has been successfully completed and all start up reports, operation manuals, and operational testing reports specified in the Contract Documents are submitted to the Owner;
- 8.5.2 Performance guarantees, if any, have been demonstrated through a performance testing report documenting all specified performance criteria in the Contract Documents have been met;
- 8.5.3 The Design-Builder has completed or corrected those items listed on the Pre-Substantial Completion Punchlist prepared by the Design-Builder and accepted by the Owner (failure to include any items on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents);
- 8.5.4 The Work is ready for uninterrupted operation;
- 8.5.5 All Permitting Authorities have issued temporary or permanent certificates of occupancy or approvals to place the Project into operation, and all conditions of the permits have been satisfied;
- 8.5.6 All operator training is completed in accordance with the Contract Documents; and
- 8.5.7 The Work is sufficiently complete so that the Owner can utilize the same for its intended use.
- 8.6 Notice of Substantial Completion. When the Owner, on the basis of a joint inspection with the Design-Builder, determines that the Work is substantially complete, and when the Design-Builder has complied with all other conditions precedent to Substantial Completion provided for in the Contract Documents, the Owner will then prepare a Notice of Substantial Completion which shall establish when the Owner determines the Project to be substantially complete and shall state the responsibilities of the Design-Builder, if any, for security, maintenance, utilities, damage to Work and insurance, and shall affix the time in which the Design-Builder shall complete the items listed on the Substantial Completion Punchlist. If the Owner issues a Notice of Substantial Completion on the basis of partial completion of the Project or on the basis of a partial or temporary certificate of occupancy, the Owner may include such additional conditions as it

deems appropriate to protect its interests pending Substantial Completion of the entire Project or issuance the of a permanent certificate of occupancy.

- 8.7 Substantial Completion Punchlist. The Substantial Completion Punchlist shall be delivered simultaneously with the Notice of Substantial Completion contemplated herein. Upon satisfactory completion of all items on the Substantial Completion Punchlist and satisfaction of those requirements set forth in paragraph 8.8 of this Agreement, the Design-Builder may apply for disbursement of the balance of any retainage held by the Owner.
- 8.8 Final Completion. Final completion of the Project shall be deemed to have occurred if all of the following have occurred:
- 8.8.1 Substantial Completion has occurred;
 - 8.8.2 The Work can be used and operated in accordance with applicable laws and permits;
 - 8.8.3 All spare parts and special tools purchased by the Design-Builder as part of vendor's supplies have been delivered to the Owner and are free of all liens;
 - 8.8.4 All items on the Substantial Completion Punchlist shall have been completed by the Design-Builder to the Owner's satisfaction;
 - 8.8.5 The Design-Builder shall have satisfied the additional conditions prescribed by the Owner in conjunction with a Notice of Substantial Completion issued on the basis of partial completion of the Project or a partial or temporary certificate of occupancy;
 - 8.8.6 The Design-Builder shall have provided to the Owner releases and waivers of lien for all Work performed by the Design-Builder and each subcontractor or vendor;
 - 8.8.7 The Design-Builder shall have made a written assignment to the Owner of all warranties and guarantees which the Design-Builder received from subcontractors or vendors to the extent that the Design-Builder is obligated to do so;

- 8.8.8 The Design-Builder shall have delivered to the Owner a complete set of as-built documents and project record plans/drawings prepared in accordance with the Contract Documents;
- 8.8.9 The Design-Builder has delivered to the Owner all other submittals required by the Contract Documents, including but not limited to, all installation, operation and maintenance manuals for equipment furnished by the Design-Builder and all product data sheets for all materials furnished by the Design-Builder;
- 8.8.10 All rubbish and debris shall have been removed from the Project site;
- 8.8.11 All construction aids have been removed from the Project site; and
- 8.8.12 The Design-Builder has delivered to the Owner all warranties and guarantees required by the Contract Documents.
- 8.9 Final Acceptance. Final acceptance of the Project shall be deemed to have occurred if:
- 8.9.1 Final completion has occurred;
- 8.9.2 The Owner shall have received from the Design-Builder all documents required for the Owner's final tax and fixed asset records with respect to the Project; and
- 8.9.3 The Design-Builder agrees to cooperate in good faith with the Project Manager to enable the Project Manager to deliver to the Owner certification to the effect that the events or items referenced in paragraphs 8.7 and 8.8 have occurred.
- 8.10 Liquidated Damages. The Design-Builder recognizes that the Owner will suffer damages if Substantial Completion of the Project is not achieved by the Substantial Completion Date and that such damages are impossible to calculate with certainty as of the execution hereof. Accordingly, the Design-Builder agrees that if Substantial Completion of the Project is not achieved by the Substantial Completion Date, the Design-Builder shall be liable to the Owner for liquidated damages in the amount of \$_____ for each day of delay in achieving Substantial Completion.

9. Changes in the Work.

- 9.1 Owner reserves the right to order Work changes in the nature of additions, deletions, or modifications, without invalidating this Agreement, and agrees to make corresponding adjustments in the Contract Sum and time for completion, if appropriate.
- 9.2 All changes in the Work must be authorized by a written change order executed by the Owner and the Design-Builder.
- 9.3 The Design-Builder agrees to accept its direct costs, plus an overhead and profit allowance of five percent (5%) as full compensation for all Change Order Work and expressly waives any claims for additional compensation associated with Change Order Work unless otherwise agreed to in writing by the Owner in advance of the Design-Builder performing said Work. For purposes of this Contract, the term "direct costs" shall mean all of those direct costs incurred by the Design-Builder excluding any costs which are included in the fees to be paid the Design-Builder.
- 9.4 The Design-Builder shall be compensated for changes in the Work necessitated by the enactment or revision of codes, laws, or regulations subsequent to the execution of this Agreement by both parties.
- 9.5 Notwithstanding anything contained in this Agreement to the contrary, Design costs shall not form a part of the cost associated with any change until formal acceptance by the Owner of the construction drawings for the Project. For purposes of this paragraph, the term "design costs" shall include, but shall not be limited to, fees paid to architects, engineers, and other professionals, together with any incidental costs associated with the provision of design services. The parties agree that all such costs are included in the compensation to be paid Design-Builder for basic services under the terms of this Agreement related to the Project.

10. Direct Material Purchases. Design-Builder shall implement and administer that direct tax savings purchase plan, more particularly described in Schedule "E" attached hereto. Except for the risk of loss associated with the directly purchased materials, which shall remain with Owner, the Design-Builder shall assume full and complete responsibility for all materials purchased through the direct tax savings purchase plan implemented and administered by the Design-Builder and shall reimburse the Owner for any and all direct or special damages incurred by the Owner as a result of defective materials. The Design-Builder shall afford the Owner a fee adjustment equal to any tax benefits realized by the Design-Builder as

the result of the implementation of the direct tax savings plan, including but not limited to, any tax credits arising under the provisions of IRC Section 170D.

11. Correction of Work.

11.1 The Design-Builder shall promptly correct Work rejected by the Owner or known by the Design-Builder to be defective or failing to conform to the construction documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed.

11.2 If the Design-Builder fails to correct defective Work as required or persistently fails to carry out Work in accordance with the Construction Documents, the Owner, by written order, executed by the Owner's designated representative, may order the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for benefit of the Design-Builder or other persons or entities.

11.3 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Construction Documents and this Agreement, and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may correct such deficiencies. In such a case, an appropriate change order shall be issued deducting from payments then or thereafter due the Design-Builder the cost of correcting such deficiencies. If the payments then or thereafter due the Design-Builder are not sufficient to cover the amount of the deduction, the Design-Builder shall pay the difference to the Owner.

12. Design-Builder's Warranty. The Design-Builder shall warrant that all materials and equipment included in the Work will be new, except where indicated otherwise in the Contract Documents, and that such Work will be of good quality, free from improper workmanship, in compliance with all applicable laws, rules, codes and regulations and in conformance with the Plans and Specifications and will give proper and continuous service under all conditions of service required by, specified in, or which may be reasonably inferred from the Contract Documents. With respect to the Work, the Design-Builder further agrees to correct all Work found by the Owner to be defective in material and workmanship or not in conformance with applicable laws or the Plans and Specifications for a period of eighteen (18) months from the Date of Substantial Completion, or for such longer periods of time as may be set forth with respect to specific warranties

contained in the trade sections of the Specifications, as well as any damage to the Work resulting from defective design, materials, equipment or workmanship which develop during the construction or during the warranty period. The Design-Builder shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. All such warranties shall commence upon Substantial Completion of the Project unless the warranted Work is not completed or has been rejected, in which case the warranty for the Work shall commence on the completion or acceptance of the Work. In addition, the Design-Builder shall conduct, jointly with the Owner, a warranty inspection twelve (12) months after the date of the Owner's Occupancy. Any repairs or replacements done under this warranty shall comply with the requirements of the Contract Documents and shall be verified by the performance of such testing as the Owner may require. All cost incidental to such repair, replacement and testing, including the removal, replacement and re-installation of equipment and materials necessary to gain access, shall be borne by the Design-Builder. The Design-Builder warrants such repaired or replaced work against defective design, materials and workmanship for a period of eighteen (18) months from and after substantial completion of the Project or twelve (12) months from the time of such repair or replacement, whichever occurs latest. Should Design-Builder fail to promptly make the necessary redesign, repair, replacement and tests, the Owner may perform or cause to be performed the same at the Design-Builder's expense. The Design-Builder shall reimburse the expense incurred by the Owner for such remedial work within thirty (30) days from the date of receipt of the Owner's invoice therefore. Should the Design-Builder fail to satisfy such expenses in a timely manner, interest shall accrue on any expenditures made by the Owner at the maximum interest rate allowed by law. The Design-Builder shall be liable for the satisfaction and full performance for the warranties set forth herein.

13. Use of Design Materials. All drawings, electronic media, and specifications prepared in connection with the Project shall remain the property of the Owner and the Design-Builder shall not be entitled to a repeat design fee or any other compensation should the Owner elect to utilize said drawings, electric media, and specifications in connection with additional alterations or remodelings. Should the Owner elect to utilize said documents on such future editions and alterations without the services of the Design-Builder, the Design-Builder shall be released from any liability relating to the Owner's use of said design documents. The Design-Builder hereby assigns to the Owner any and all right, title, and interest it may possess in the design documents and materials produced in connection with this contract, including, but not limited to, all statutory and common law copyrights it possesses in said documents and materials. The future use of said materials shall be at the sole discretion of the Owner.

14. Patents, Trademarks, Copyrights. The Design-Builder shall pay, as a cost of the Work, all applicable royalties and license fees on any and all matters arising in connection with the Work. The Design-Builder shall defend all suits or claims for infringement of patent, trademark and copyrights against the Owner and shall save the Owner harmless from all loss or account thereof from any and all matters arising in connection with the Work or the Project.
15. Bonds, Insurance and Waiver of Subrogation. The Design-Builder shall, at all times, during the duration of this Agreement, provide and maintain, and require all of its subcontractors to do the same, the following types of insurance protecting the interests of the Owner and the Design-Builder with limits of liability not less than those set forth below or as otherwise may be required by the Contract Documents, whichever limits of liability are greater.
- 15.1 Workers Compensation. The Design-Builder shall maintain Workers Compensation Insurance, insuring its liability under the Workers Compensation and Occupational Disease Laws of the State of Florida, with limits of liability not less than:
- 15.1.1 Five Hundred Thousand and No/100 Dollars (\$500,000.00) each accident for bodily injury by accident; Five Hundred Thousand and No/100 Dollars (\$500,000.00) each employee for bodily injury by disease; and
- 15.1.3 Five Hundred Thousand and No/100 Dollars (\$500,000.00) policy limit for disease.

The Workers Compensation policy provided by Design-Builder must be endorsed with a waiver of subrogation endorsement waiving the Design-Builder's right of subrogation against the Owner.

- 15.2 Commercial General Liability Insurance. The Design-Builder will maintain commercial general liability insurance which shall include coverage on an "occurrence basis" and affording the following coverages:
- 15.2.1 Premises – operation.
- 15.2.2 Explosion, collapse, and underground property damage (XCU).
- 15.2.3 Products – completed operation.
- 15.2.4 Blanket contractual liability.
- 15.2.5 Personal injury.
- 15.2.6 Advertising injury.
- 15.2.7 Premises medical payments.
- 15.2.8 Broad form property damage.
- 15.2.9 Additional insureds – employees and voluntary workers.
- 15.2.10 Newly acquired organizations.

- 15.2.11 Property damage liability.
- 15.2.12 Independent contractors.
- 15.2.13 Completed operations coverage to be maintained for ten (10) years following final completion of the Project.

The coverages to be furnished shall be, at a minimum, as broad as those coverages provided in ISO Form GLC 0001 12/07.

The commercial general liability insurance to be maintained by the Design-Builder must be endorsed with a broad form property damage endorsement (including completed operations). The Owner shall be named as additional named insureds on the comprehensive general liability policy. The limits of liability associated with the Design-Builder's commercial general liability policy shall not be less than the following:

Four Million and No/100 Dollars (\$4,000,000.00) each occurrence;

Six Million and No/100 Dollars (\$6,000,000.00) aggregate.

The limits of liability shall apply on a per-project basis.

Notwithstanding anything contained herein to the contrary, the coverages under the commercial general liability policy to be furnished by the Design-Builder must be afforded on a policy form no more restrictive than the last edition of the commercial general liability policy filed by the Insurance Service Office, Inc.

15.3 Business Automobile Liability Insurance. The Design-Builder shall maintain business automobile liability insurance covering all owned, non-owned, and hired vehicles used by the Design-Builder in connection with the Project with a combined minimum limit of One Million and No/100 Dollars (\$1,000,000.00), single limit for bodily injury and property damage liability each person/each occurrence.

15.4 Design-Builder's Professional Liability Insurance The Design-Builder shall purchase and maintain professional liability insurance coverage with a minimum level of liability coverage of not less than Five Million and No/100 Dollars (\$5,000,000.00) per claim/Seven Million and No/100 Dollars (\$7,000,000.00) in aggregate, insuring against losses arising out of the delivery of professional engineering and architectural services by the Design-Builder and its sub-consultants in connection with the Project. The deductible associated with the professional liability insurance policy shall not exceed \$100,000.00.

- 15.5 Umbrella (Excess) Liability Insurance. The Design-Builder shall maintain an umbrella (excess) liability insurance policy in an amount not less than Twenty Million and No/100 Dollars (\$20,000,000.00) combined single limit bodily injury/property damage, in excess of the commercial general liability insurance and business automobile insurance described above. The annual aggregate associated with the umbrella (excess) liability policy shall be Twenty Million and No/100 Dollars (\$20,000,000.00). Both the excess and primary limits of liability coverage shall apply on a per project basis.
- 15.6 Property Insurance. It is the Design-Builder's responsibility to carry its own Property insurance including insurance on equipment, that will not become an integral part of the completed Project.
- 15.7 Builder's Risk Insurance. The Owner shall purchase builder's risk insurance for the Project. If requested by the Owner, the Design-Builder shall purchase such insurance for the Owner's benefit and shall be reimbursed by the Owner for such expense. If the Design-Builder assists the Owner in this regard, the cost of such coverage shall not be considered Cost of the Work and Design-Builder shall not be entitled to any fee in connection with such an expenditure. The Design-Builder shall pay Ten Thousand and No/100 Dollars (\$10,000.00) per claim towards the satisfaction of any deductible associated with the Owner's Builder's Risk Policy.
- 15.8 Design-Builder's Pollution Liability Policy. The Design-Builder's pollution liability insurance providing coverage for losses caused by pollution conditions that arise from the operations of the Design-Builder performing the Work hereunder which shall include the following coverages:
- 15.8.1 Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
 - 15.8.2 Property damage including physical damage to or destruction of tangible property including the resulting loss of use thereof, cleanup costs and the loss of use of tangible property that has not been physically injured or destroyed;
 - 15.8.3 Defense, including costs, charges, and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and

15.8.4 Non-owned disposal site coverage for specified sites.

Pollution Conditions mean the discharge, disbursement, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapors, soot, fumes, acids, alkalis, toxic chemical waste and waste materials into or upon land, or any structure on land, the atmosphere or any water course or body of water, including ground water, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered which result in claims for bodily injury and/or property damage.

The limits of liability associated with contractor pollution liability policy shall not be less than the following:

\$1,000,000.00 each occurrence;
\$2,000,000.00 annual aggregate.

15.9 Subcontractor's/Sub-consultant's Insurance Coverage. The Design-Builder shall require its subcontractors and sub-consultants to maintain the following minimum insurance coverages for the Project:

15.9.1 Worker's Compensation and Employer's Liability insurance with limits of liability not less than:

10.9.1.1 Three Hundred Thousand and No/100 Dollars (\$300,000.00) for each accident for bodily injury by accident;

10.9.1.2 Three Hundred Thousand and No/100 Dollars (\$300,000.00) for each employee for bodily injury by disease; and

10.9.1.3 Three Hundred Thousand and No/100 Dollars (\$300,000.00) policy limit for disease.

15.9.2 A policy of Comprehensive General Liability Insurance containing the same coverages as required by the Design-Builder with a combines single limit for liability injury, personal injury and property damages of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) aggregate. The general aggregate limit shall apply on a per project basis.

15.9.3 Unless otherwise agreed to in writing by the Owner, all professional

sub-consultants retained the Design-Builder shall maintain professional liability insurance coverage with a minimum combined single limit of One Million and No/100 Dollars (\$1,000,000.00) insuring the Owner against losses arising out of the provision of professional engineering and architectural services by Design-Builder and its sub-consultants in connection with the Project. The deductibles associated with each such professional liability policy shall not exceed Twenty-Five Thousand and No/100 Dollars (\$25,000.00). Nothing contained herein shall require the Design-Builder's non-professional sub-contractors to maintain the professional liability insurance referenced in this paragraph.

15.9.4 Business Automobile Liability Insurance Policy covering all owned, non-owned, and hired vehicles used by the subcontractor in connection with the Project with a combined minimum limit of One Million and No/100 Dollars (\$1,000,000.00) for bodily injury and property damage per occurrence/aggregate.

15.9.5 An umbrella and/or Excess Liability Policy with limits of liability not less than Five Million and No/100 Dollars (\$5,000,000.00). Said insurance limits shall apply on a per project basis.

15.9.6 All subcontractor policies shall be endorsed to provide that the Design-Builder and the Owner are additional named insureds. In addition, all of the subcontractors' policies shall be endorsed to provide that the insurers waive their rights of subrogation against the Owner.

15.10 Public Construction Bond. The Design-Builder shall provide to the Owner a public construction bond. The public construction bond to be furnished by the Design-Builder shall be in an amount not less than the Contract Sum established for the Project. The public construction bond shall be issued by a surety company possessing the following minimum ratings in the latest issue of A.M. Best TK Rating Guide in a form of bond identical with that attached hereto as Schedule "F". The public construction bond required hereunder shall be furnished by the Design-Builder upon the execution this Agreement establishing a Contract Sum.

15.11 Extent of Coverages. The insurance coverages referred to above are set forth in full in their respective policy forms, and the foregoing descriptions of such policies are not intended to be complete or to limit any provisions of the actual policies and should said description be narrower than the

coverages afforded under the actual policies of insurance, the provisions of the actual policies of insurance shall govern.

15.12 Waiver of Subrogation. The Design-Builder's insurance policies shall be endorsed to provide that the insurers waive their rights of subrogation against Owner and also to provide that the policies afford primary coverage over any other applicable insurance coverages.

15.13 Insurance Certificate. Prior to performing any services hereunder, The Design-Builder shall file with the Owner a certificate of insurance in a form acceptable to the Owner. The certificate shall reflect the Owner as an additional insured on the Design-Builder's commercial general liability, business automobile liability, pollution liability insurance and umbrella (excess) liability policies. In addition, the Owner shall be reflected as a certificate holder with respect to the Design-Builder's errors and omissions insurance. The certificate of insurance furnished by the Design-Builder shall contain a provision that the coverages afforded under the policies described thereon will not be canceled until at least thirty (30) days prior written notice has been given to the Owner. In addition to the foregoing Certificate of Insurance, the Design-Builder shall procure and furnish to the Owner an endorsement to its commercial, general, and excess liability insurance policies reflecting the Owner as an additional insured under said policies. The additional insured endorsement to be provided to the Owner hereunder shall be similar to C 2010 85 (An acceptable form of endorsement can be accomplished by combining CG 2033 07/04 and CG 2037 07/04.)

15.14 Rating of Insurance Companies. All companies issuing the policies provided for herein shall be licensed or approved by the Department of Insurance, State of Florida, and shall have a financial rating no lower than II, and a policy holder's surplus rating no lower than (A) as listed in the most current edition of A.M. Best TK Rating Guide. Companies with ratings lower than those specified herein shall only be acceptable upon the written consent of the Owner.

16. Indemnification. In consideration of the first One Hundred and No/100 Dollars (\$100.00) to be paid hereunder and to the fullest extent permitted by law, the Design-Builder agrees to indemnify, hold harmless, and defend the Owner's agents (excluding licensed professionals) and their respective agents, servants, and employees, from and against all claims, costs, expenses, or liability (including attorneys' fees), attributable to bodily injury, sickness, disease, or death, or to damage to, or destruction of property (other than the work itself) (arising out of,

or resulting from, with the performance of work by the Design-Builder, its subcontractors, their agents, servants, or employees but only to the extent caused by the negligent acts or omissions of them. The Design-Builder's obligation hereunder shall only be limited to the extent of the monetary limitations set forth herein and shall not be limited by the provisions of any workers compensation or similar act. The Design-Builder's monetary obligation under this indemnification provision is specifically limited to the sum of One Million and No/100 Dollars (\$1,000,000.00). The parties hereby agree that the foregoing monetary limitation bears a reasonable commercial relationship to the Agreement. The parties acknowledge and agree that this Agreement is part of the Project specifications. This indemnity clause is intended to comply with Florida laws on indemnity and, specifically, to comply with Florida Statute §725.06 and is to be interpreted in such a way as to be enforceable.

17. Termination of Agreement.

17.1 If the Design-Builder shall fail to commence work, fail to diligently prosecute work to the completion thereof in a diligent, efficient, timely, workmanlike, skillful, and careful manner and in accordance with the provisions of the Contract Documents, fail to use an adequate amount or quality of personnel or equipment to complete the work, fails to make prompt payments to its subcontractors, materialmen, or laborers, or otherwise materially breaches this Agreement or the provisions of the other Contract Documents, then the Owner shall have the right, if the Design-Builder shall not cure any such default after fifteen (15) days written notice thereof to (i) terminate this Agreement; (ii) take possession of and use all or any part of the Design-Builder's materials, equipment, supplies, and other property of every kind used by the Design-Builder in the performance of the work and to use such property in the completion of the work; or (iii) complete the work in any manner it deems desirable, including engaging the services of other parties therefor. Any such act by the Owner shall not be deemed a waiver of any other right or remedy of the Owner. If after exercising any such remedy, the cost to the Owner of the performance of the balance of the work is in excess of that part of the contract sum which has not theretofore been paid to the Design-Builder hereunder, the Design-Builder shall be liable for and shall reimburse the Owner for such excess.

17.2 If the Owner fails to perform any of its obligations hereunder, the Design-Builder shall have the right to give the Owner a written notice thereof, stating the nature of the default complained of. If the Owner does not cure such default within fifteen (15) days after receipt of such notice, the Design-Builder shall have the right to terminate this Agreement by giving

the Owner written notice thereof at any time thereafter while such default remains uncured and payment shall only be made to the Design-Builder for reasonable demobilization costs, the fee earned to the date of termination, and all outstanding costs incurred as of the date of termination. Said payment shall be the Design-Builder's sole damages for the Owner's breach. The Design-Builder shall similarly have the right to terminate upon fifteen (15) days' notice if the work is suspended or a period of ninety (90) consecutive days or more from causes not the fault of the Design-Builder.

- 17.3 It is recognized that if the Design-Builder is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate the Design-Builder's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, the Owner shall be entitled to request of the Design-Builder or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within thirty (30) days of delivery of the request shall entitle the Owner to terminate this Agreement. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Owner shall be entitled to proceed with the work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be back charged against amounts then or thereafter paid or otherwise due the Design-Builder.
- 17.4 The Owner hereby reserves the right to terminate this Agreement without regard to fault or breach upon thirty (30) days written notice to the Design-Builder, effective immediately unless otherwise provided in said notice. In the event of such termination, the Owner shall pay as the sole amount due to the Design-Builder (i) all sums due for work performed to date and applicable, prorated Design-Builder fees; and (ii) reasonable costs of demobilization. Such sums will be due and payable on the same conditions as set forth in paragraph 7.4.5 for final payment to the extent applicable. Upon receipt of such payment, the parties hereto shall have no further obligations to each other except for the Design-Builder's obligations to perform corrective and/or warranty work and to indemnify the Owner as provided for in this Agreement and other Contract Documents. It is understood and agreed that no fee or other compensation or payment shall be due or payable for unperformed work. The Design-Builder agrees that each subcontract and purchase order issued by it will reserve for the Design-Builder the same right of termination provided by this paragraph,

and the Design-Builder further agrees to require that comparable provisions be included in all lower tier subcontracts and purchase orders.

18. Notice of Claim and Waiver of Remedies. The Owner's liability to the Design-Builder for any claims arising out of or related to the subject matter of this Agreement, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions: All claims must be submitted as a Request for Change Order in the manner as provided herein;

18.2 The Design-Builder must submit a Notice of Claim to the Owner and to the Engineer within twenty (20) days of when the Design-Builder was or should have been aware of the occurrence of the event giving rise to the claim; and

18.3 Within ten (10) days of submitting its Notice of Claim, the Design-Builder shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.

The Design-Builder agrees that the Owner shall not be liable for any claim that if the Design-Builder fails to submit as a Notice of Claim as provided in this paragraph, the Design-Builder shall be deemed to have released the Owner from any such claims.

19. Diversity and Local Participation.

18.1 Non-Discrimination. The Design-Builder shall not discriminate against employees, sub-consultants or subcontractors because of race, color, religion, sex, age, national origin, or ancestry. The Design-Builder shall take affirmative action to insure that employees and subcontractors are retained and utilized on the Project without regard to the race, color, religion, sex, age, national origin, or ancestry.

18.2 Disadvantaged Business Enterprise Participation. The Owner encourages the Design-Builder to use subcontractors who are certified as disadvantaged business enterprises as defined in Section 288.703, Florida Statutes ("DBE") so as to promote opportunities for DBE to participate in the Project. The Design-Builder when seeking subcontractors for the Project agrees to use its best efforts to insure the participation of local DBE.

18.3 Local Business Enterprises. The Owner encourages The Design-Builder to utilize business enterprises based in Lee County, Florida. The Design-Builder when seeking subcontractors and sub-consultants agrees to use its best efforts to assure the participation of business enterprises based in Lee County, Florida.

20. Accuracy, Technical Sufficiency of Services Provided by the Design-Builder.

20.1 No Obligation. Notwithstanding anything contained herein to the contrary, it is understood and agreed between the parties that the Owner is not examining any of the Contract Documents for accuracy and technical sufficiency, and is not under any obligation to inspect the Project. Furthermore, it is understood and agreed between the parties that neither the review, approval nor acceptance by the Owner of data, surveys, studies, designs, specifications, calculations, plans, drawings, or any other documents furnished hereunder by the Design-Builder shall in any way relieve the Design-Builder of responsibility for the adequacy, completeness, and accuracy of its work, and in no event shall the Owner's review, approval, acceptance of or payment for such services be construed to operate as a waiver of any of the Owner's rights under this Agreement or of any cause of action it may have, arising out of the performance of this Agreement.

20.2 Responsibility for Work. The Design-Builder hereby acknowledges that the Owner does not make any representations or warranties to the Design-Builder by virtue of the information contained in any request for proposals, request for qualifications, or the program descriptions contained therein. The Design-Builder further acknowledges that it, alone, is responsible for the accuracy, completeness, and technical sufficiency of all work performed under this Agreement, and that the information contained in any Design Criteria Package, request for proposal or request for qualifications received from the Owner does not relieve, release, or in any way whatsoever diminish the Design-Builder's ultimate responsibility for the accuracy, completeness, and technical sufficiency of the Project and any work performed hereunder.

20.3 Local Conditions and Project Site. Execution of this Agreement by the Design-Builder is a representation that the Design-Builder has visited the Project site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Design-Builder represents

that it has performed its own investigation and examination of the Project work sites and their surroundings and satisfied itself before entering into this Agreement as to:

20.3.1 Conditions bearing upon transportation, disposal, handling and storage of materials;

20.3.2 The availability of labor, materials, equipment, water, electrical power, utilities and roads;

20.3.3 Uncertainties of weather, flooding, and similar characteristics of the site;

20.3.4 Conditions bearing upon security and protection of material, equipment and Work in progress;

20.3.5 The form and nature of the Work site, including the surface and sub-surface conditions;

20.3.6 The extent and nature of Work and materials necessary for the execution of the Work and the remedying of any defects therein; and

20.3.7 The means of access to the site and the accommodations it may require and, in general, will be deemed to have obtained all information as to risks, contingencies and other circumstances.

21. Design-Builder's Records and Owner's Right To Audit.

21.1 Records of the Design-Builder's personnel, subcontractors, and the construction costs pertaining to this Project shall be kept in accordance with generally accepted accounting practices.

21.2 The Design-Builder shall keep full and detailed accounts and financial records pertaining to the provision of services for the Owner. The Owner and the Owner's accountants and other representatives shall be afforded access to the Design-Builder's records, books, correspondence, instructions, drawings, receipts, subcontractor agreements, purchase orders, vouchers, memoranda, and other data relating to this Agreement upon seven (7) days written notice from Owner. The Design-Builder shall preserve the aforementioned financial records for a period of ten (10) years after final payment, or for such longer period as may be required by law.

- 21.3 The Design-Builder is required to keep and maintain records that ordinarily and necessarily would be required by the County to perform the Work and as further required by the Section 119.0701, Florida Statutes, specifically including that these records are public records under this Agreement. The Design-Builder must provide public access to these records under the same terms and conditions that the County would provide public access and at a cost that does not exceed the costs established by the County. Public records must be transferred in a format compatible with the County's information technology systems, at no cost, upon termination of the Agreement and any duplicates of the public records that are exempt or confidential must be destroyed.
- 21.4 If an audit inspection or other examination by the County or the County's representatives in accordance with this paragraph, discloses overcharges (of any nature) by the Design-Builder to the County in excess of one (1%) percent of the total Contract Sum, the cost of the County's audit (whether performed by the County or outside auditors) must be reimbursed or paid to the County by the Design-Builder. Any adjustments must be made within a reasonable amount of time (not to exceed 30 days) from presentation of the County's findings to the Design-Builder.

22. Claims and Disputes.

- 22.1 Prior to the filing of any litigation by the Owner or the Design-Builder against the other (and, except as described below, as a precondition to any such filing), the Owner and the Design-Builder shall engage in pre-suit non-binding mediation. Such mediation may be requested by either party, at any time, and shall be conducted the same as if such mediation were ordered by a Florida Circuit Court (i.e., in accordance with, and subject to, all of the laws and rules applicable to court-ordered mediation). Such mediation shall be conducted within a reasonable period of time after the same is requested in writing by either party. If the parties are unable to agree upon the selection of a mediator, either party may petition or request that the Circuit Court in Lee County, Florida (or the Mediation Coordinator for the Courts of Lee County, Florida) appoint a mediator. A mediator who is so appointed may only be challenged for cause, and not preemptorally. While the request for and the conducting of such a mediation may be a precondition to the filing of a civil action, in the event either party is in jeopardy of losing its right to sue (e.g., the statute of limitations is about to expire), then suit may be filed before a mediation is conducted provided that mediation is requested before, or simultaneously with the filing of such suit, and is conducted before the named defendant in the suit is required to respond to the complaint. If the

scheduling of the mediation requires, the plaintiff in the suit shall grant the defendant an appropriate extension of time to respond to the complaint so as to permit the mediation to be conducted before the defendant must so respond. The mediation contemplated hereunder shall be conducted, unless otherwise agreed by the parties, in Lee County, Florida. The parties shall bear the mediator's fee and any filing fees associated with the mediation equally.

22.2 The Owner and the Design-Builder agree that any litigation between them arising out of, resulting from, or relating to this Agreement or the Project shall be venued in a state court of competent jurisdiction in Lee County, Florida.

22.3 In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including a reasonable attorney's fee.

23. Owner's Separate Contractors.

23.1 The Owner reserves the right to award separate contracts for the installation of equipment at the Project which work shall be performed in conjunction with performance of the Work.

23.2 The Design-Builder shall afford the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and for execution of their work at the Project site.

23.3 The Design-Builder shall assume full and complete responsibility for The Owner's separate contractors and shall direct the coordination and sequencing of the Owner's separate contractors with the work to be performed by the Design-Builder so as to insure the timely delivery to the Owner of a fully functional and operational Project. Any delays associated with the Owner's separate contractors shall not relieve the Design-Builder of its obligation to deliver the Project in accordance with the Master Project Schedule and the substantial completion date referred to herein.

24. Special Provisions.

24.1 Procurement. The Design-Builder warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the Design-Builder, to solicit or secure this Agreement and that it

has not paid any person, company, corporation, individual, or firm, other than a bonafide employee working solely for the Design-Builder any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

- 24.2 Public Entity Crime Information Statement. Any person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity, for the construction or repair of a public building, or public work, may not submit bids or leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY 2 for a period of thirty-six (36) months from the date of being placed on the Convicted Vendors List.
- 24.3 Standard of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed in a skillful and competent manner by the Design-Builder and its sub-consultants and subcontractors in accordance with good and sound public works construction practices.
- 24.4 Unauthorized Aliens. The Owner will consider the employment by the Design-Builder of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationalization Act and a material breach of this Agreement. Such violations shall be cause for unilateral cancellation of this Agreement.
- 24.5 Business Ethics. The Design-Builder agrees to maintain business ethics meeting the Owner's business ethics expectations. The Owner's business ethics expectations are more particularly described in Schedule "G" attached hereto and incorporated herein by reference.
- 24.6 Ownership of Contract Document. Any and all drawings, specifications, designs, models, photographs, reports, surveys and other data and documents submitted, provided or created by the Design-Builder in connection with this Agreement are and will remain the property of the Owner, whether the Project for which they are made is completed or not. All documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Design-Builder, whether finished

or unfinished, will become the property of the Owner and must be delivered by the Design-Builder to the Owner within seven (7) days of the date this Agreement is terminated by either party; but not later than the date of the final payment request for this Project. Any compensation due to the Design-Builder will be withheld until all documents are received as provided herein. This applies to all contract documents and construction documents produced in any phase of the Work, without regard to whether a subsequent phase is undertaken by the Design-Builder.

24.7 Drug Free Workplace. It is a requirement of the Owner that it enter into contracts only with firms that certify the establishment of a drug-free workplace. Execution of this Agreement by the Design-Builder will also serve as the Design-Builder's required certification that it either has or that it will establish a drug-free workplace.

24.8 Access. The Design-Builder shall afford the Owner and its authorized designees access to the Project site at all times.

25. Miscellaneous.

25.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

25.2 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, signed by the parties against whom the enforcement of such modification, waiver, amendment, discharge, or change is sought.

25.3 Nothing contained in this Agreement shall create a contractual relationship or cause of action in favor of a third party against either the Owner or the Design-Builder.

25.4 This Agreement and the Schedules attached hereto constitute the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein.

25.5 This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument. A signature by any party to this Agreement provided by facsimile or electronic mail, provided such electronic mail is a scanned Portable Document Format (PDF) of the original Agreement or

sent with the ability for the receiving party to digitally verify the signatures on the Agreement, is binding upon that party as if it were the original.

- 25.6 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person(s) or entity may require.
- 25.7 In the event of any conflict between the terms of this Agreement and any other contract documents including specifications for the Project, the following order of document precedence shall govern and control:
- 1 Change Orders
 - 2 Amendments to this Agreement
 - 3 Agreement
 - 4 Design Criteria Package
 - 5 Owner Requirements in the RFQ/RFP solicitation package
 - 6 Lee County Utilities Design Manual
 - 7 Project technical specifications (prepared by Design-Builder)
 - 8 Project construction plans (prepared by Design-Builder)
 - 9 RFP/RFQ solicitation requirements
- 25.8 If any provision or any portion of any provision of this Agreement or the application of any such provision or portion thereof to any person or circumstance shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Agreement, or the application of such provision held invalid, or unenforceable to persons or circumstances other than those to which it has been invalid or unenforceable, shall not be effected thereby.
- 25.9 In the event of any dispute as to the precise meaning of any term contained herein, the principles of construction and interpretations that written instruments be construed against the drafter shall not apply.
- 25.10 All articles, titles, or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement and shall not affect the meaning or interpretation of this Agreement.
- 25.11 All notices, demands, or other communications made pursuant to this Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or other communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or Certified Mail, Return Receipt Requested, with proper postage prepaid at the following address:

If to Owner: Roger Desjarlais
County Manager, Lee County
P.O. Box 398
Fort Myers, FL 33902

With a copies to: Richard Wm. Wesch, Esq.
County Attorney, Lee County
P.O. Box 398
Fort Myers, FL 33902

And to: Pam Keyes, P.E.
Director, Department of Utilities
1500 Monroe Street, Third Floor
Fort Myers, Florida 33901

If to Design-Builder: _____

With a copy to: _____

Or to such other address or to such other persons as any party may designate to the other for such purpose in the manner herein above set forth.

25.12 The parties hereto shall, at any time and from time to time following the execution hereof, execute and deliver all such and further instruments and take all such further action as may be reasonably necessary or appropriate in order to carry out more effectively the purposes of this Agreement.

26. Successors and Assigns. The Owner and the Design-Builder each binds itself, its partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Design-Builder shall assign, sublet or transfer its interest in this Agreement without the written consent of the other.

27. **STATUTORY NOTICE. ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.**

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the day and year first above written. Lee County, through its Board of County Commissioners, authorized the County Chair to execute this Agreement on the _____ day of _____, 2015

**THE COUNTY
LEE COUNTY, FLORIDA
Board of County Commissioners**

BY _____

DATE: _____

**ATTEST: LINDA DOGGETT
CLERK OF COURTS**

By: _____
Deputy Clerk

DESIGN-BUILDER

BY: _____

By: _____

Its: _____

DATE: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____ as _____ of _____.

Signature of Notary Public - State of Florida

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

Type of Identification Produced: _____

Sample

Schedules

Schedule "A"	Legal Description
Schedule "B"	Milestone Project Schedule
Schedule "C"	Partial Waiver of Liens and Claims
Schedule "D"	Final Affidavit and Final Waiver and Release
Schedule "E"	Direct Sales Purchase Plan
Schedule "F"	Public Construction Bond
Schedule "G"	Owner's Business Ethics Expectations
Schedule "H"	Design Criteria Package

Sample

SCHEDULE "A"

LEGAL DESCRIPTION

Sample

SCHEDULE "B"

MILESTONE PROJECT SCHEDULE

Sample

SCHEDULE "C"

PARTIAL WAIVER OF CLAIMS AND CERTIFICATION

The undersigned Design-Builder does hereby certify, affirm and agree as follows:

1. Except as specified herein, Design-Builder hereby affirmatively waives and releases any and all claims it possesses relating in any fashion whatsoever to the Project through the period covered by the Application for Payment No. _____, including but not limited to, payment claims, claims for extra work, or claims for extensions of contract terms. This release does not cover any retainage held by Owner.
2. Design-Builder hereby represents and warrants to Owner that all of the work performed by Design-Builder, its subcontractor or lower tier subcontractors has been performed in accordance with the Drawings and Specifications and building codes for the Project and that Design-Builder knows of no deviation from the Contract Documents or defects relating to its work and/or that of its subcontractors.
3. Design-Builder certifies that all as-builts are up to date as of the date of this Waiver and Certification.

DESIGN-BUILDER

BY: _____

By: _____

Its: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, as _____ for _____.

Signature of Notary Public - State of Florida

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known__ or Produced Identification__

Type of Identification Produced: _____

SCHEDULE “D”

DESIGN-BUILDER’S FINAL AFFIDAVIT AND
FINAL WAIVER AND RELEASE

- A. OWNER _____
- B. DESIGN-BUILDER: _____
- C. FACILITY: _____
- D. CONTRACT DATE: _____
- E. PROJECT DESCRIPTION: _____

- F. OWNER’S PROJECT NUMBER: _____
- G. APPLICATION FOR PAYMENT NUMBER: _____
- H. AMOUNT OF FINAL PAYMENT: _____

For and in consideration of the payments made by the Owner to the undersigned Design-Builder, or to any subcontractor, materialman or supplier of the undersigned, for labor and employed in and/or materials furnished for the construction of the above referenced Project, the undersigned Contactor hereby certifies, affirms and agrees as follows:

1. Upon receipt of the sum specified in Item H above, the undersigned Design-Builder certifies that it has received payment in full for all sums due and payable under the contract described herein, as amended by all change orders and other amendments, if any (collectively, the “Contract”), and all sums due for all work performed and all labor, materials and services furnished in the construction of the project, and the undersigned Design-Builder hereby affirms that there will be no outstanding claims against the Owner and Design-Builder does affirmatively release Owner from any and all claims relating to the Project.

2. The undersigned Design-Builder does hereby waive, release and quit claim in favor of the Owner of the Project, each and every party acquiring title to and /or making a loan on the Project, and the title company or companies examining and/or insuring title to the Project and any and all of their successors and assignees, all rights of the undersigned Design-Builder to assert any lien or claim upon the land and improvements comprising the Project, by virtue of any law in the jurisdiction in which the land and improvements are situated or any amendment of said law, regarding the rights of a contractor, subcontractor, laborer, supplier or materialman to assert a lien or claim against land and improvements.

3. The undersigned Design-Builder does hereby forever release, waive and discharge the Project and the Owner of the Project from any and all causes of action, suits, debts, accounts, damages, liens, encumbrances, judgments, claims and demands whatsoever, in law or equity,

which the undersigned and/or its successors and/or assignees ever had, now have or will ever have against the Owner of the Project, by reason of the Contract and/or the performance of Work and/or the furnishing of labor, services and materials relating to the construction of the Project; and in consideration of the final payment stated above, the undersigned hereby agrees to defend, indemnify and hold the Owner harmless for any and all damages, costs, expenses, demands, suits and legal fees, directly or indirectly relating to or arising out of any claim or lien by any party relating to that which was paid or performed or should have been performed by or for the undersigned Design-Builder in connection with the Project or under the terms of the Contract. This Final Affidavit and Final Waiver and Release forms a part of the specifications for the Project. The Design-Builder's liability under this indemnity is limited to the Guaranteed Maximum Price reflected in the Construction Management Agreement existing between the parties.

4. The undersigned Design-Builder has not and will not assign any claim against the Owner of the Project, nor any lien or right to perfect a lien against the Project, and the undersigned has the right, power and authority to execute this Affidavit, Final Waiver and Release.

5. The undersigned Design-Builder certifies and guarantees that all laborers and all subcontractors employed by it, and all other laborers, trade contractors and subcontractors and sub-subcontractors of every tier and all suppliers or material men who have furnished work, labor, materials or services in connection with the Project have been paid in full and that none of such laborers, subcontractors, trade contractors, sub-subcontractors, suppliers and materialmen or other claimant have any claim, demand or lien against the Project, and the undersigned Design-Builder hereby agrees to defend, indemnify and hold the Project and the Owner of the Project harmless from any such claim, demand or lien.

6. No security interest has been given or executed by the undersigned Design-Builder for or in connection with any materials, appliances, machinery, fixtures or furnishings placed upon or installed in the Project.

This Final Affidavit and Final Waiver and Release shall be an independent agreement and covenant and shall operate and be effective with respect to Work and labor done and materials furnished under any supplemental contract or contracts, whether oral or written, for extra or additional work on the Project and for any further work done or materials furnished at any time with respect to the Project subsequent to the execution hereof.

IN WITNESS WHEREOF, this Affidavit and Final Waiver and Release of Lien has been executed this _____ day of _____, 2015.

WITNESS

DESIGN-BUILDER:

Name: _____

By: _____

Its: _____

Subscribed and sworn to before me this _____ day of _____, 2015.

(Notary Public)

My Commission Expires: _____

(Notarial Seal)

Sample

SCHEDULE "E"

DIRECT SAVINGS PURCHASE PLAN

1. Florida Statutes (FS) s. 212.08(6) and Florida Administrative Code (FAC) Rule 12A-1.094 provide the Owner with an opportunity to recover the sales tax, otherwise deemed payable by the Design-Builder or subcontractor, on the purchase of tangible personal property prior to the time it is affixed or incorporated into the Owner's real property as part of a public works project. In the event of a conflict with this article, the provisions of FS s. 212.08 and FAC Rule 12A-1.094 will control.
2. The Owner, in consultation with the Project Manager will be responsible to determine whether the substance of a particular transaction is a taxable sale to or use by a contractor, or an exempt direct sale to the Owner, based upon all of the facts and circumstances surrounding the transaction as a whole.
3. The following criteria, which govern the status of the tangible personal property prior to its affixation to the Owner's real property, will be used to determine whether the Owner rather than a contractor (or subcontractor) is the purchaser of materials:
 - (a) Direct Purchase Order. The Owner must issue its purchase order directly to the vendor supplying the materials the Design-Builder will use and provide the vendor with a copy of the Owner's Florida Consumer Certification of Exemption.
 - (b) Direct Invoice. The vendor's invoice must be issued to the Owner, rather than to the Design-Builder.
 - (c) Direct Payment. The Owner must make payment directly to the vendor from public funds.
 - (d) Passage of Title. The Owner must take title to the tangible personal property from the vendor at the time of purchase or delivery by the vendor.
 - (e) Assumption of the Risk of Loss. Assumption of the risk of damage or loss by the Owner at the time of purchase is a paramount consideration. The Owner will be deemed to have assumed the risk of loss if the Owner bears the economic burden of obtaining insurance covering damage or loss, or directly enjoys the economic benefit of the proceeds of the insurance.
4. Certificate of Entitlement
 - (a) To be entitled to purchase materials tax exempt for a public works project, the Owner is required to issue a Certificate of Entitlement to each vendor and to the Owner's Design-Builder to affirm that the tangible personal property purchased from that vendor will go into or become part of the Project
 - (b) The Owner purchase order for the tangible personal property to be incorporated into the Project must be attached to the Certificate of Entitlement. The Owner must issue a separate Certificate of Entitlement for each purchase order.

- (c) The Owner must affirm that if the Department of Revenue determines that tangible personal property sold by the vendor tax-exempt pursuant to the Certificate of Entitlement does not qualify for the exemption under FS 212.08(6) or FAC Rule 12A-1.094, the Owner will be liable for any tax, penalty and interest determined to be due.
- (d) The Owner may not transfer liability for the tax, penalty and interest to another party by contract or agreement.
- (e) The Certificate of Entitlement will be issued by Procurement Management in accord with this Article in a form substantially similar to Attachment 1.

5. Design-Builder Liable for Tax.

- (a) Design-Builders, including subcontractors, manufacturing, fabricating, or furnishing tangible personal property that the Design-Builder incorporates into the Project are liable for tax in accordance with FAC Rule 12A-1.051. The Design-Builder and subcontractors, not the Owner, are deemed to be the ultimate consumers of the articles of tangible personal property they manufacture, fabricate, or furnish to perform their contracts and may not accept a Certificate of Entitlement for these articles.
- (b) Design-Builders that supply raw materials such as rock, shell, fill dirt, and similar materials for incorporation into the Project are liable for the tax in accordance with FAC Rule 12A-1.051.
- (c) Design-Builders that manufacture and incorporate asphalt into the Project are liable for tax on their costs in accordance with FAC Rule 12A-1.051(12), subject to a partial exemption as provided in FS s. 212.06(1)(c).

6. Processing a Sales Tax Recovery Request.

- (a) Purchases processed pursuant to the sale tax recovery provisions and in strict compliance with the criteria set forth in this Article 8.2 are exempt from compliance with the Procurement Code.
- (b) The solicitation package will state the Owner intends to use the Sale Tax Recovery process and a sample copy of the purchase order with the Owner's terms is attached as Attachment 2.
- (c) The Design-Builder will include the cost of all materials and equipment in the GMP. The GMP must also include (a) all Florida State sales taxes normally applicable to the materials or equipment; and, (b) all clerical, administrative, management, supervisory, inspection, handling, storage, and other costs necessary for the Design-Builder to comply with Sales Tax Recovery.
- (d) If the Owner elects to make Sales Tax Recovery purchases, the responsibilities of the Owner and Design-Builder will be governed by this Article.
- (e) The Design-Builder must require major subcontractors to comply with these provisions.
- (f) Requisition Request. The Design-Builder will forward to the Owner a Requisition Request identifying each item of material or equipment to be purchased by the Design-Builder for the Project. This Requisition Request must be acceptable to the

Project Manager and the Engineer of Record. The Requisition request must include all of the following information:

- i. The name, addresses, telephone number, and contact person for the supplier.
 - ii. Manufacturer or brand, model or specification number of the item.
 - iii. Quantity needed as estimated by the Design-Builder or its subcontractors and suppliers.
 - iv. The price quoted by the Supplier for the material or equipment in question.
 - v. Any sale tax associated with the quote.
 - vi. Shipping, handling, and insurance costs.
 - vii. Delivery date as established by the Design-Builder R or its subcontractors and suppliers.
 - viii. Special terms and conditions that have been negotiated with the supplier relative to payment terms, discounts, rebates, warranty, credits or other terms and conditions that will revert to the Owner.
 - ix. Statement, including submittal control numbers, indicating that the materials have been reviewed and approved by the Architect or Engineer during the shop drawing submittal process and otherwise comply with applicable specifications.
- (g) Upon receipt of a complete Requisition Request, the Owner will promptly determine which items will be purchased under Sales Tax Recovery. The Design-Builder will be notified in writing of those items the Owner does not choose to purchase and the Design-Builder will be responsible for purchase of those items.
- (h) The Owner will prepare a Purchase Order (substantially similar to Attachment 2) for the items the Owner has chosen to purchase. The Purchase Order will require (a) that the supplier provide shipping and handling insurance; and, (b) delivery on the dates provided in the Requisition Request. A copy of each Purchase Order will be sent to the Design-Builder to verify that the items ordered are in accordance with the required terms, quantities, and delivery dates.
- (i) A Certificate of Entitlement will be prepared and executed by Procurement Management in accordance with this Article and attached to each Purchase Order. The Purchase Order and Certificate of Entitlement will be sent to the vendor with a copy to the Design-Builder.
- (j) The Design-Builder will prepare, and the Owner will execute, deductive Change Orders reflecting the purchases made by the Owner. The amount of the deduction will bear a direct relationship to the Purchase Order amount plus the sales tax avoided. These Change Orders should be executed before the related Purchase Order is paid.
- (k) Nothing in this section alters or modifies the procedures for submission of shop drawings and other submittals by the Design-Builder.
- (l) Sale Tax Recovery purchases by the Owner in no way relieve the Design-Builder of compliance with specification requirements, coordination, protection, scheduling, or warranty.
- (m) Delivery and Acceptance of Items.

- i. The Design-Builder is fully responsible for the receipt and acceptance of Sale Tax Recovery items. At minimum, the Design-Builder must: verify receipt of the correct items and quantities; verify documentation; coordinate and inspect delivery; obtain and verify warranties required by the contract documents; inspect and accept each item at the time of delivery; unload, handle, and store the items in accordance with the manufacturer's recommendations.
 - ii. As Sales Tax Recovery items are delivered to the job-site, the Design-Builder and an Owner representative must visually inspect all shipments, and approve the supplier's shipping documents and invoice. The Design-Builder will assure that each delivery document identifies the Purchase Order against which the delivery is made. The Design-Builder will forward approve invoices to the Owner's representative for payment.
 - iii. The Design-Builder and Owner representative will inspect Sales Tax Recovery items prior to acceptance. If the Design-Builder discovers defective or nonconforming items, the Design-Builder must promptly notify the Owner and will assist the Owner in obtaining repair or replacement of the item. The defective or nonconforming item may not be used in the Project. The Design-Builder will be fully responsible if the Design-Builder fails to perform the required inspection or otherwise accepts defective or nonconforming materials, equipment, or other items.
- (n) The Design-Builder warrants Sale Tax Recovery items the same as all other materials and equipment furnished by the Design-Builder; and, nothing in this Article alters or modifies the Design-Builder's obligations to assist the Owner relative to warranties.
- (o) The Design-Builder must purchase and maintain Builder's Risk Insurance sufficient to protect the entire Project, including Sales Tax Recovery items. The insurance must cover the full value of any Sale Tax Recovery items not yet incorporated into the Project starting from the moment of delivery to the Project site. This insurance will be required in addition to any insurance the Owner may obtain.
- (p) The Design-Builder is liable for any interruption or delay in connection with Sales Tax Recovery items.
- (q) The Design-Builder will provide the Owner's representative with a monthly report documenting the amount and nature of Sales Tax Recovery items accepted by the Design-Builder. The Design-Builder will match all material and equipment to Purchase Orders, invoices, delivery tickets, and inspection and acceptance reports.
- (r) Upon receipt of appropriate documentation from the Design-Builder, payment will be made directly by the Owner to the appropriate supplier/vendor in accordance with the terms and conditions of the Purchase Order.
- (s) The Design-Builder must obtain lien waivers and other releases from suppliers/vendors.

- (t) The Design-Builder will maintain records of all Owner Sales Tax Recovery purchase items incorporated into the Project. These records must be available for inspection by the Owner upon request.

Sample

SCHEDULE "G"
BUSINESS ETHICS EXPECTATIONS

1.1 During the course of pursuing contracts with Owner and while performing contract work in accordance with this agreement, Design-Builder agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the Owner best interests.

1.2 Design-Builder shall take reasonable actions to prevent any actions or conditions which could result in a conflict with Owner's best interests. These obligations shall apply to the activities of Design-Builder employees, agents, subDesign-Builders, subDesign-Builder employees, consultants of Design-Builder, etc.

Design-Builder employees, agents, subDesign-Builders, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to Owner's representatives, employees or their relatives.

Design-Builder employees, agents or subDesign-Builders (or their relatives) should not receive any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subDesign-Builders, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the project.

1.3 Design-Builder agrees to notify a designated Owner representative within 48 hours of any instance where the Design-Builder becomes aware of a failure to comply with the provisions of this article.

The telephone number to report any concerns related to any possible violations of the Owner's Business Ethics Expectations is (239) 343-2910.

1.4 Upon request by Owner, Design-Builder agrees to provide a certified Management Representation Letter executed by selected Design-Builder representatives in a form agreeable to Owner stating that they are not aware of any situations violating the business ethics expectations outlined in this contract or any similar potential conflict of interest situations.

SCHEDULE "H"

DESIGN CRITERIA PACKAGE

Sample