

**ADDENDUM NO. 1**

**NOTICE is hereby given to Request For Proposal (RFP) Invitees** of the following information, clarifications, and modifications to the RFP Documents. The RFP Documents remain unchanged except for modifications specifically indicated under MODIFICATIONS below. Invitees must acknowledge receipt of this Addendum on the ACKNOWLEDGE AND ACCEPTANCE Form in Section 4 of the RFP. Invitees must comply with the requirements for submission of proposals as set forth in the RFP Documents.

**MODIFICATIONS**

**NOTICE is hereby given that the RFP Documents have been modified to include the following documents:**

- 1. Pre-bid Conference Agenda with Meeting Notes**
- 2. Appendix H – Draft Contract Agreement**

Individual replacement pages are issued herewith and have an Issue Date of September 24.

This Addendum and items listed above are provided to Invitees in Portable Document Format (\*.PDF). This Addendum will be posted on the Owner's website and the Procore project website.

**Prepared and Issued by Woodard & Curran (Owner's Consultant) on behalf of Owner:**

Town of Montverde, Florida

This page intentionally left blank



## TOWN OF MONTVERDE

### WWTP RFP

#### PRE-PROPOSAL MEETING PREP NOTES

This Meeting:	Pre-proposal	Bid Due Date/Time:	October 1, 2024 @ 3:00 PM EST
Date/Time:	September 4, 2024 @ 2:00 PM EST	Bid Location:	Procore
Location:	Virtual – Microsoft Teams		
Project Name:	WWTP		
Project Number:	2024-WW002 (0233076.07)		
Client:	Town of Montverde		

---

#### **Introductions/Opening**

- *My name is Shawn Brown and I am a Senior Project Manager with engineering consulting firm Woodard & Curran working out of their Tampa, Florida office. I will be leading the meeting today.*
- *Advise everyone meeting is being recorded. We will be providing access to the recorded meeting through Procore, the cloud based document management system we are using for this RFP. We will be using Procore for saving all RFIs and for distributing Addendums, responses to RFIs, and other important proposal related documents.*
- *Thank all for their continued interest in the Montverde WWTP project and for attending this Virtual Pre-Proposal Meeting. RFP 2024-WW002 is the second RFP issued for the Montverde WWTP Design-Build project. The Town made the decision to cancel the first RFP 2024-WW001 because it was determined after the RFP was issued that the property identified for the location of the WWTP would not be feasible. The Town decided it would be best to cancel the RFP until a suitable replacement site was identified. The Town was able to identify a new property that is already owned by the Town that is suitable for the WWTP and therefore has*



decided to issue a revised RFP. The majority of the RFP remains unchanged but there are a handful of significant revisions which I will highlight in this presentation.

- *If there are any new attendees who did not participate in one of the first two pre-bid meetings for RFP 2024-WW001 and need me to go through the details of the project including the funding restrictions, can you please raise your hand using the icon at the top of the Teams Meeting page.*
- *Can you please enter your name, company name, phone number, and email address in the Chat. That will allow our Project Delivery Specialist, Lori Aumack at [LAumack@woodardcurran.com](mailto:LAumack@woodardcurran.com), to add you to Procore so that you can receive all documents pertaining to the project RFP.*
- *Otherwise, I will mainly be focusing on what changes were made to the newly released RFP 2024-WW002.*
- **Meeting agenda slide**

## **AGENDA**

- A. Introductions
  - B. Funding Restrictions
  - C. Project Overview
  - D. Scope of Work
  - E. Proposal and RFI Forms
  - F. Milestone Schedule
  - G. Proposal Submittal and Evaluation
  - H. Other Attachments
  - I. Questions
- *Please enter any questions that you have during the presentation in the Chat and will review and respond to questions in the sequence they are received at the end of the presentation. Any questions we are unable to get to by the end of the 60 minutes will be answered in writing and included with the meeting minutes. The meeting minutes along with a complete set of questions with answers which will be issued in the form of an Addendum to the project.*



- *This is a Design Build or Engineer/Procure/Construct project. Woodard & Curran is serving in the capacity of the Owner's Advisor. This WWTP project is part of a larger septic to sewer project for the Town of Montverde.*
- *Montverde has successfully secured funding money to fully implement the septic-to-sewer project which includes the construction of a new WWTP and the first phase of a town-wide collection system. This is a very important and high profile project for the Town. The project supports the initiatives set forth by the St. Johns Water Management District to improve the quality of surface waters in central Florida (including Lake Apopka which abuts the east side of the Town of Montverde) and to preserve the high quality ground water in the Floridan Aquifer system which is the primary source of drinking water for residents and businesses in this part of central Florida.*
- *The Town will be financing the project with assistance from one or more of several funding sources that have been secured by the Town which include*
  - *American Rescue Plan Act (ARPA) funding administered by Lake County*
  - *CSLFRF funding (Coronavirus State and Local Fiscal Recovery Funds) administered by FDEP, and*
  - *SAHFI (Supplemental Appropriation for Hurricanes Fiona and Ian) funding which is also administered by the Florida Department of Environmental Protection (FDEP)*
- *The funding carries certain requirements and restrictions which all suppliers, contractors, and subcontractors must fully comply with.*
- *Please note that due to time restrictions tied to use of the funding, liquidated damages do apply to this project.*
  - *LDs of \$1,000 will be due for each day that expires after the date agreed to for Substantial Completion until the Work is substantially complete.*
  - *LDs of \$750 will be due for each day that expires after the date agreed to for Final Completion until the Work is completed and ready for final payment.*



## **Funding Compliance Requirements**

Goal for Disadvantaged Business Enterprise participation in Lake County, FL: 5.4% for 2022-2024 and 3.75% for 2025-2027.

NOTE: BABA requirements (Build America, Buy America) have been waived for this Project.

Additional contractual restrictions and requirements are specified in Section 1.9 of the RFP including Florida Statutory requirements, insurance requirements, and proposal bonding requirements. A proposal or bid bond must be submitted with the proposal in the amount of 5% of the base bid proposal amount as indicated on Line Item 21 of the Base Proposal Form under Section 4.1.

## **Project Overview**

Site layout change – deleted Site Layout drawing from Appendix B

PFD comments (Appendix D)

- Processes in gray indicate future plant upgrades.
- Indicates main unit processes but does not indicate equipment quantities or number of treatment trains. These requirements are described in Section 5 – Project Overview, Appendix A – Equipment Design Criteria, or will be determined and identified by the SUPPLIER in their proposal.

- Added SUPPLIER System Warranty and Process Guarantee

## **Scope of Work**

- *Permits - FDEP Domestic Wastewater Facility Permit will be prepared and applied for by W&C*
- *Removed Genset, ATS, main disconnect*

## **Proposal and RFI Forms**

## **Milestone Schedule**



- *Shortened time frame to issue Notice To Proceed in order to insure funding window deadlines for obligation and use of the funds.*

### **Proposal Submittal and Evaluation**

- *Suppliers will be evaluated on four primary components.*
- *Proposal Approach*
  - *Clarity of what the Supplier is providing in their Scope of Supply*
  - *Technical quality which includes meeting the technical design requirements in the RFP as well as providing quality materials, parts, and equipment that maximizes operations and minimizes maintenance.*
  - *Demonstrate a clear understanding of the project requirements in the suppliers narrative and design approach*
- *Qualifications and Experience*
  - *Overall experience of firm with design, supply, and installation of WWTPs*
  - *Experience and credentials of primary team members who would be leading and managing the design and construction work*
  - *Experience and references for projects of similar size and design to the Montverde project with projects in or near Florida preferred but not necessary.*
- *Lump Sum Cost for the base WWTP design – Line Item 21 in Section 4.1 – Base Proposal Form.*
- *Other Non-Cost Factors*
  - *Accounting for future expansions and the possibility of upgrades to improve effluent quality*
  - *Terms of the SUPPLIER's Process Performance Guarantee and System & Equipment Warranty.*
  - *Simplicity of operation and low annual operating and maintenance costs*



- *The importance of preventing impact (sight, noise, odor) to the adjacent residential properties.*
- *Project Schedule – Shorter achievable timelines will be evaluated more favorably*
- *Safety --> Experience Modification Rate – Metric used by insurance companies that compares a company's safety to other businesses in the industry.*

### **Other Attachments**

- A - Equipment Design Tables – specify the minimum sizing and process performance requirements that SUPPLIERS must meet.
- B - Site Layout
- C - Preliminary Design Report (DRAFT) – Provides a good overview of the project as well as information on plant expansion to ultimate full build out capacity of the WWTP.
- D - Process Flow Diagram
- E - Administrative Quality and Implementation Standards
  - E-1 - Site Work Restrictions and Site Safety
  - E-2 – Quality Control and Quality Assurance
  - E-3 – Project Communication and Documentation Requirements
  - E-4 – Construction Logistics (who is responsible for what on site) and Performance Testing
- F - Design and Construction Standards – general material, equipment, and construction standards that will apply to the overall Scope of Work.
- G - Awarded Contract Restrictions and Requirements – terms and conditions associated with the three funding sources
  - G-1 - List of applicable funding related Terms and Conditions which are provided in the order listed under G-7 after the Forms.
  - G-2 – Performance & Payment Bond Requirements
  - G-3 – Compliance with Florida Trench Safety Act (may not apply to WWTP)





- G-4 – Drug Free Workplace – businesses that certify that they have implemented a drug free workplace plan in compliance with Florida statutes will be given preference in the evaluation process over an equivalent proposal that does not have the certification.
- G-5 and G-6 – focus on specific regulatory provisions and contract requirements that suppliers must comply with as part of the project which are included in the funding Terms and Conditions.
- G-7 – There are 3 Forms that each SUPPLIER must complete and provide with their Proposal – Conflict of Interest and Litigation Statement, Public Entity Crimes Form, and Florida DEP Supplementary Conditions Certificate of Compliance.
- Copies of all funding related terms and conditions follow the Forms under G-7 including a copy of the latest Davis Bacon Labor Rates, an example of the Form that needs to be completed during the project to comply with the American Iron and Steel Provisions, and a copy of the SRF Loan Program terms and conditions specified in FAC Chapter 62-503.
- H- Contract Draft – to follow as an Addendum

### Questions

- *Address any questions in Chat.*
- *Open up to verbal questions or discussion.*

### Meeting Conclusion

- *Remind them minutes with all questions and answers will be issued as an Addendum.*
- *Please use the RFI form to submit questions that were not asked in this meeting*
- *Recording of the meeting will be posted on Procore. If anyone joined the meeting late, Procore is the cloud based document management system we are using for this RFP. So if you haven't joined Procore yet and would like to provide a proposal for the project please send an email with your contact information and a request to join Procore for the Montverde WWTP RFP project to our Project Delivery Specialist Lauren Clum-Russell at [Lauren.ClumRussell@woodardcurran.com](mailto:Lauren.ClumRussell@woodardcurran.com) . I will also provide her email address in the chat.*



- *Thank them all for coming and their interest in the project plus wish them all good luck*



---

**APPENDIX H – DRAFT CONTRACT AGREEMENT**

**AGREEMENT  
BETWEEN OWNER AND DESIGN-BUILDER  
ON THE BASIS OF A STIPULATED PRICE**

**THIS AGREEMENT** is by and between the TOWN OF MONTVERDE, FLORIDA (“Owner”), a municipal corporation whose principal location is 17404 Sixth Street, Montverde, Florida 34756, and [ ] (“Design-Builder”), Federal Employer Identification Number [ ] whose principal location is [ ].

**PROJECT INFORMATION**

Project: Montverde Wastewater Treatment Plant, Project #2024-WW002

Design-Build Contract: **[name, Owner’s identification number]** (“Contract”)

Owner’s Consultant: Woodard & Curran, Inc. has been retained by Owner to serve as the Owner’s Advisor to prepare Conceptual Documents and to provide consultation services for this Project.

Engineer: Design-Builder has retained [ ] (“Engineer”) for the performance of professional engineering services under this Contract. **[Identify the individual or entity retained for engineering design services. See EJCDC® D-505, Agreement between Design-Builder and Engineer for Professional Services.]**

Authorized Representatives: Owner and Design-Builder each hereby designates a specific individual authorized to act as representative with respect to the performance of responsibilities under this Contract. Such an individual shall have authority to transmit instructions, receive formal notices, receive information, and render decisions relative to this Contract on behalf of the respective party that the individual represents.

1. Owner’s Authorized Representative: [ ] **[include mailing and delivery addresses, e-mail address, telephone numbers]**
2. Design-Builder’s Authorized Representative: [ ] **[include mailing and delivery addresses, e-mail address, telephone numbers]**

Owner and Design-Builder further agree as follows:

**ARTICLE 1 – THE WORK**

1.01 *General Description of Work*

- A. Design-Builder shall complete all Work as specified or indicated in the Contract. The Work is generally described as the design and construction of the following: [ ]

**ARTICLE 2 – CONTRACT TIMES**

2.01 *Time of the Essence*

- A. All time limits for Design-Builder’s attainment of Milestones, if any, Substantial Completion, and completion and readiness for final payment, as stated in the Contract, are of the essence of the Contract.

2.02 *Contract Times: Days*

- A. Design-Builder will substantially complete the Work within [ ] days after the Effective Date.

- B. Design-Builder will have the Work completed and ready for final payment, in accordance with Paragraph 14.06 of the General Conditions, within [ ] days after the Effective Date.
- C. Design-Builder shall attain the following Milestone(s):
  - 1. Milestone 1 [event & date/days]
  - 2. Milestone 2 [event & date/days]
  - 3. Milestone 3 [event & date/days]

### 2.03 Liquidated Damages; Early Completion Bonus

- A. Design-Builder and Owner recognize that time is of the essence as stated in Paragraph 2.01 above, and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 2.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving, in a lawsuit or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design-Builder agree that as liquidated damages for delay (but not as a penalty):
  - 1. Substantial Completion: Design-Builder shall pay Owner \$1,000.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 2.02.A above for Substantial Completion until the Work is substantially complete.
  - 2. Completion of Remaining Work: After Substantial Completion, if Design-Builder shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Design-Builder shall pay Owner \$750.00 for each day that expires after such time until the Work is completed and ready for final payment.
  - 3. Liquidated damages for failing to timely attain Substantial Completion, final completion, and Milestones (if applicable) are not additive, and will not be imposed concurrently. Liquidated damages for failing to attain Substantial Completion shall take precedence.

#### **NOTE(S) TO USER:**

- 1. ***At Substantial Completion, the Owner is able to use the Work for its intended purpose, by definition. See General Conditions, Paragraph 1.01.A. Achieving Substantial Completion is typically a critical deadline, and the associated damages for missing this deadline are typically significant. The subsequent failure to complete the punch list tasks and bring the Work to a complete close by the final completion date may also result in some degree of damages to Owner—though typically these damages are significantly less than the daily damages for not achieving Substantial Completion on time. Some users may choose to establish liquidated damages only for the failure to achieve Substantial Completion. If that is the case, delete Paragraphs 2.03.A.2, 3, and 4 above.***
- 2. ***If failure to achieve a Milestone on time is of such consequence that the assessment of liquidated damages is warranted for failure to reach the Milestone on time, then retain and complete Paragraph 2.03.A.4; if not, delete it. Add additional similar paragraphs for any additional Milestones***

*subject to a liquidated damages assessment. Liquidated damages for Milestones might, in some cases, be additive to liquidated damages for failing to timely attain Substantial Completion; if so this should be specifically established by revising Paragraph 2.03.A.3.*

- B. *Bonus:* Design-Builder and Owner further recognize that the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Design-Builder agree that as a bonus for early completion, Owner shall pay Design-Builder \$[ ] for each day prior to the time specified in Paragraph 2.02 for Substantial Completion [as set forth in this Agreement as of the Effective Date] or [as duly adjusted pursuant to the Contract] that the Work is substantially complete. The maximum value of the bonus shall be limited to \$[ ].

**NOTE(S) TO USER:**

- 1. *If early completion would be a benefit to Owner, then consider retaining and completing the bonus clause above as Paragraph 2.03.B. The daily bonus for early completion need not be exactly the same as the daily post-Substantial Completion liquidated damages amounts, but presumably the two amounts will be reasonably compatible.***
- 2. *Note that the entitlement to an early completion bonus (and the amount of the bonus) may be measured against the original Substantial Completion date, or against the Substantial Completion date as duly adjusted by contractual time extensions for excusable delay event and the like. The user should choose one of the bracketed options in the text above, and delete the other.***
- 3. *If no bonus will be offered, then delete Paragraph 2.03.B, and delete the words "Early Completion Bonus" from the title of Paragraph 2.03.***

**ARTICLE 3 – CONTRACT PRICE**

**3.01 *Stipulated Sums***

- A. Owner shall pay Design-Builder for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
1. For all Work other than Unit Price Work, a lump sum of: \$[ ].
  2. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 12.02 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Owner.

3. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) \$[ ].

***[or, as an alternative to Paragraphs 3.01.A.1, 2, and 3 above, the following alternate Paragraph 3.01.A.1:]***

1. For all Work, at the prices stated in Design-Builder's Proposal, attached hereto as an exhibit.

**NOTE(S) TO USER:**

1. ***If adjustment prices for variations from stipulated Proposal quantities or other baseline quantities have been agreed to, insert appropriate provisions. (Such provisions are referred to as variation in estimated quantities—VEQ—clauses. See EJCDC® D-800, Paragraph SC-12.02).***
2. ***Depending upon the particular project's pricing structure, use 3.01.A.1 alone; 3.01.A.1, 2, and 3 together; 3.01.A.2 alone; or the alternate 3.01.A.1 alone, deleting those not used and renumbering accordingly. If alternate 3.01.A.1 is used, Design-Builder's Proposal should be attached as an exhibit and listed as a Contract Document in Article 7 below.***

3.02 ***Changes in Contract Price Based on Cost of the Work***

- A. If the price of Design Professional Services covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, then for such Design Professional Services (exclusive of reimbursable expenses, if any) the Engineer, Project Design Professional, or other design entity performing the Design Professional Services (regardless of tier) may invoice no more than the direct labor cost of each employee providing services multiplied by a factor of [ 10% ], which covers labor costs, overhead, and profit.
- B. If the value of Work covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, and involves Work performed under Construction Subcontracts or Design Agreements, the allowable mark-ups on lower tier invoices shall be limited as stated in Paragraph 11.05.D.2.c and d of the General Conditions.

## ARTICLE 4 – PAYMENT PROCEDURES

### 4.01 *Submittal and Processing of Payments*

- A. Design-Builder shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Owner will process Applications for Payment as provided in the General Conditions.

### 4.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Design-Builder's Applications for Payment on or about the [ ] day of each month during performance of the Work as provided in Paragraph 4.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

- 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

- a. [ ] percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner, then as long as the character and progress of the Work remain satisfactory to Owner, there will be no additional retainage; and
- b. [ ] percent of cost of materials and equipment not incorporated in the Work ***[but delivered, suitably stored, and accompanied by documentation satisfactory to Owner as provided in Paragraph 14.01.B of the General Conditions]*** (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design-Builder to [ 100 ] percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 14.01.G of the General Conditions, and less [ 200 ] percent of Owner's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

- C. Notwithstanding the provisions above, no retainage shall be withheld with respect to the portion of a payment application pertaining to engineering, design, and other professional services.

### 4.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions, Owner shall pay the remainder of the Contract Price.



## ARTICLE 5 – INTEREST

### 5.01 Interest Rate

- A. All amounts not paid when due shall bear interest at the rate of [ ] percent per annum, or if applicable at the rate stated in a governing prompt payment statute.

## ARTICLE 6 – DESIGN-BUILDER’S REPRESENTATIONS

### 6.01 Representations

- A. Design-Builder makes the following representations for Owner’s reliance:
1. Design-Builder has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  2. Design-Builder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Design-Builder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Design-Builder has carefully studied all: (a) reports of explorations and tests of subsurface conditions at or adjacent to the Site, and all drawings of physical conditions relating to existing surface or subsurface structures at the Site, if any, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings, and (b) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings.

#### **NOTE(S) TO USER:**

***Modify or delete Paragraph 6.01.A.4 if there are no such reports or drawings.***

5. Design-Builder has considered the information known to Design-Builder itself, and to Construction Subcontractors and Project Design Professionals that Design-Builder has selected as of the Effective Date; information commonly known to design professionals, design-builders, and contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings (if any) identified in the Contract Documents or otherwise made available to Design-Builder, with respect to the effect of such information, observations, and documents on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder; and (c) Design-Builder’s safety precautions and programs.
6. Based on the information and observations referred to in the preceding paragraph, Design-Builder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary prior to entry into the Contract at the Contract Price, subject to the Contract Times.
7. Design-Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

8. Design-Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the Contract Documents, and the written response from Owner is acceptable to Design-Builder.
9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
10. Design-Builder's entry into this Contract constitutes an incontrovertible representation by Design-Builder that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## ARTICLE 7 – CONTRACT DOCUMENTS

### 7.01 Contents

- A. The Contract Documents consist of the following:
  1. This Agreement (pages 1 to [ ], inclusive).
  2. Performance bond (pages [ ] to [ ], inclusive).
  3. Payment bond (pages [ ] to [ ], inclusive).
  4. Warranty Statement
  5. Process Guarantee Statement
  6. Standard General Conditions of the Contract Between Owner and Design-Builder (pages i to iv and 1 to 59, inclusive).
  7. Supplementary Contract Conditions (pages 1 to 6, inclusive).
  8. Request For Proposal Project #2024-WW002 – Montverde Wastewater Treatment Plant.
  9. Addenda (numbers [ ] to [ ], inclusive).
  10. Design-Builder's Proposal for Project #2024-WW002.
  11. Addendum No. 1 to Agreement Between Owner and Design-Builder on the Basis of a Stipulated Price.
  12. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Work Change Directives.
    - b. Change Orders.
    - c. Record Drawings and Record Specifications
  13. Other Exhibits to this Agreement (enumerated as follows):
    - a. Geotechnical Site Report (to be provided before Contract Agreement execution)

#### **NOTE(S) TO USER:**

1. **List other required attachments (if any), such as documentation submitted by Design-Builder prior to Notice of Award and documents required by funding or lending agencies.**

- B. The documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 8 – MISCELLANEOUS**

### **8.01 Terms**

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and Supplementary Conditions.

### **8.02 Assignment of Contract**

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on the other party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

### **8.03 Successors and Assigns**

- A. Owner and Design-Builder each binds itself, its successors, assigns, and legal representatives to the other party hereto, and its successors, assigns, and legal representatives, in respect to all covenants, agreements, and obligations contained in the Contract.

### **8.04 Severability**

- A. Any provision or part of the Contract held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design-Builder, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### **8.05 Design-Builder's Certifications**

- A. Design-Builder certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.05:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.06 *Other Provisions*

**NOTE(S) TO USER:**

1. ***Insert other provisions here if applicable.***

DRAFT

IN WITNESS WHEREOF, Owner and Design-Builder have signed this Agreement.

This Agreement will be effective on [ ] (which is the Effective Date of the Contract).

**NOTE(S) TO USER:**

**Note to User: The Effective Date of the Contract stated above and the dates of any performance bond (EJCDC® D-610 or other) and payment bond (EJCDC® D-615 or other) should be the same, if possible. In no case should the date of any bonds be earlier than the Effective Date of the Contract.**

OWNER:

DESIGN-BUILDER:

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

**[If Design-Builder is a corporation, partnership, LLC, or a joint venture, attach evidence of authority to sign. In the case of a joint venture, expand the signature section to accommodate execution of the Agreement by an authorized representative of each joint venturer.]**

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

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

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

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

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_

*(where applicable)*

**[If Owner is a corporation, partnership, or LLC, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.]**

**NOTE(S) TO USER: Use in those states or other jurisdictions where licensing is applicable or required.**

**ADDENDUM NO. 1 TO AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER  
ON THE BASIS OF A STIPULATED PRICE**

Design-Builder for purposes of this Addendum is referred to as Contractor.

Owner for purposes of this Addendum is referred to as Town.

**Public Records**

Town is a public agency subject to Chapter 119, Florida Statutes, as amended from time to time. To the extent Contractor is a contractor acting on behalf of the Town pursuant to Section 119.0701, Florida Statutes, as amended from time to time, Contractor must comply with all public records laws in accordance with Chapter 119, Florida Statutes. In accordance with state law, Contractor agrees to:

- a) Keep and maintain all records that ordinarily and necessarily would be required by the Town in order to perform the services.
- b) Upon request from the Town's custodian of public records, provide the Town with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c) Ensure that public records that are exempt, or confidential and exempt, from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the Town.
- d) Upon completion of the services within this Agreement, at no cost, either transfer to the Town all public records in possession of the Contractor or keep and maintain public records required by the Town to perform the services. If the Contractor transfers all public records to the Town upon completion of the services, the Contractor must destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the serves, the Contractor must meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 407-469-2681, townclerk@mymontverde.com, 17404 SIXTH STREET, MONTVERDE, FL 34756.**

If Contractor does not comply with this section, the Town will enforce the Agreement provisions in accordance herewith and may unilaterally cancel this Agreement in accordance with state law.

### **Conflict of Interest per Ch. 112, Part III**

This Agreement is subject to Chapter 112, FL Statute (2023), and Contractor shall disclose the name of any officer, director, employee, or other agent who is also an employee of the Town of Montverde. The Contractor shall also disclose the name of any Town of Montverde employee who owns, directly or indirectly, more than a five percent (5%) interest in the Contractor's, or its affiliates, business entity.

### **Audit Rights**

The Town reserves the right to audit the records of the Contractor for the commodities and/or services provided under the contract at any time during the performance and term of the contract and for a period of five (5) years after completion and acceptance by the Town. If required by the Town, the Contractor agrees to submit to an audit by an independent certified public accountant selected by the Town. The Contractor must allow the Town to inspect, examine and review the records of the Contractor in relation to this contract at any and all times during normal business hours during the term of the contract.

### **Third Party Beneficiaries**

Neither Contractor nor Town intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party is or will be entitled to assert a right or claim against either of them based upon this Agreement.

### **Public Entity Crimes or Convicted Vendor List Statement**

Pursuant to Section 287.133(2)(a), Florida Statutes, as amended from time to time, Contractor hereby certifies that neither it nor its affiliates have been placed on the convicted vendor list following a conviction for a public entity crime. If placed on that list, Contractor must notify the Town immediately and is prohibited from providing 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 on 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 Florida Statutes, as amended from time to time, for Category Two (\$35,000) as may be amended, for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

## **Anti-Discrimination**

That Contractor, for itself, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees, as a part of the consideration hereof, hereby covenants and agrees that:

- a) No person on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity, expression or veteran or service member status be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of or performance of services described herein; and
- b) No employee or applicant for employment on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity, expression or veteran or service member status will be discriminated against during the course of employment or application for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to performance of this Agreement.

## **Discriminatory Vendor List**

Contractor hereby acknowledges its continuous duty to disclose to the Town if the Contractor or any of its affiliates, as defined by Section 287.134(1)(a), Florida Statutes, are placed on the Discriminatory Vendor List. Pursuant to Section 287.134(2)(a), Florida Statutes: “an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on 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.”

## **Foreign Gifts and Contracts**

The Contractor must comply with any applicable disclosure requirements in Section 286.101, Florida Statutes. Pursuant to Section 268.101(7)(b), Florida Statutes: “In addition to any fine assessed under [§ 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision must automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or an political subdivision until such ineligibility is lifted by the Administration Commission [Governor and Cabinet per § 14.202, Florida Statutes] for a good cause.”



## **Prohibition on Gratuities and Kickbacks**

It is unethical for any person to offer, give, or agree to give any employee or for any employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, audit, or in any other advisory capacity in any proceeding or application, request for ruling, determination claim or controversy, or other particular matter, pertaining to any program requirement or an Agreement or subcontract or to any solicitation of proposal therefore.

It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a Sub-contractor under a Contract to Contractor or higher tier sub-contractor any person associated therewith, as an inducement of the aware of a subcontract or order.

The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every Contract and subcontract and solicitation, therefore.

## **Scrutinized Companies pursuant to Sections 287.135 and 215.473, Florida Statutes**

Contractor hereby certifies that it: a) has not been placed on the Scrutinized Companies that Boycott Israel List, nor is engaged in a boycott of Israel; b) has not been placed on the Scrutinized Companies with Activities in Sudan List nor the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and c) has not been engaged in business operations in Cuba or Syria. If Town determines that Contractor has falsely certified facts under this paragraph or if Contractor is found to have been placed on the Scrutinized Companies Lists or is engaged in a boycott of Israel after the execution of this Agreement, Town will have all rights and remedies to terminate this Agreement consistent with Section 287.135, Florida Statutes, as amended. The Town reserves all rights to waive the certifications required by this paragraph on a case-by-case exemption basis pursuant to Section 287.135, Florida Statutes, as amended.

## **E-Verify Requirements**

Effective January 1, 2021, public and private employers, contractors and subcontractors must require registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- a) All persons employed by Contractor to perform employment duties within Florida during the term of the contract; and
- b) All persons (including sub vendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the Town. The Contractor acknowledges and agrees that use of the U.S. Department of

Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the Town of Montverde.

By entering into this Agreement, the Contractor becomes obligated to comply with the provisions of Section 448.095 Florida Statutes, "Employee Eligibility," as amended from time to time. This includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended, and Contractor may not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to Town incurred as a result of the termination of this Agreement in accordance with this Section.

#### **Antitrust Violations; Denial or Revocation under Section 287.137, Florida Statutes**

Pursuant to Section 287.137, Florida Statutes, as may be amended, a person or an affiliate who has been placed on the antitrust violator vendor list (electronically published and updated quarterly by the State of Florida) following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity. By entering this Agreement, Contractor certifies neither it nor its affiliate(s) are on the antitrust violator vendor list at the time of entering this agreement. False certification under this paragraph or being subsequently added to that list will result in termination of this Agreement, at the option of the Town consistent with Section 287.137, Florida Statutes, as amended.

#### **Environmental and Social Government and Corporate Activism**

Pursuant to Section 287.05701, Florida Statutes, as may be amended, Town cannot give preference to a Contractor based on social, political, or ideological interests such as:

- a) The Contractor's political opinions, speech, or affiliations.
- b) The Contractor's religious beliefs, religious exercise, or religion affiliations.
- c) The Contractor's lawful ownership of a firearm.
- d) The Contractor's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.
- e) The Contractor's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

- f) The Contractor's support of the state of Federal Government in combatting illegal immigration, drug trafficking, or human trafficking.
- g) The Contractor's engagement with, facilitation of, employment by support of, business relationship with, representation of, or advocacy for any person described in this paragraph.
- h) The Contractor's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such Contractor is in compliance with applicable state or federal law:
  - 1. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures.
  - 2. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice.
  - 3. Corporate board or company employment composition standards benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992.
  - 4. Policies and procedures requiring or encouraging employee participation in social justice programming, including but not limited to, diversity, equity, or inclusion training.

Contractors are also prohibited from giving preference to subcontractors based on the above referenced factors. Violations of this Section will result in termination of this Agreement and may result in administrative sanctions and penalties by the Office of the Attorney General of the State of Florida.

**Equal Employment Opportunity 2 C.F.R. Part 200.** During the performance of this contract, the contractor agrees as follows: (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such

employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information. (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other Contract Provisions Guide 12 sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency

and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**Compliance with the Copeland "Anti-Kickback" Act.** The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as federal agencies may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**Clean Air Act.** The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The contractor agrees to report each violation to the TOWN and understands and agrees that the TOWN will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or part with federal assistance.

**Federal Water Pollution Control Act.** The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The contractor agrees to report each violation to the TOWN and understands and agrees that the TOWN will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).** Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency. (Certification is attached)

**Procurement of Recovered Materials.** In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act

**Prohibition on Contracting for Covered Telecommunications Equipment or Services.**

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause -

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing -

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

**Domestic Preference for Procurements** As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**Compliance with Federal Law, Regulations, and Executive Orders and Acknowledgment of Federal Funding.** This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable federal law, regulations, executive orders, federal policies, procedures, and directives.

**Minimum Wages.** Under the Contract, the wage rate paid to all laborers, mechanics, and apprentices employed by the Contractor for the work under the Contract, must not be less than the prevailing wages rates for similar classifications for work as established by the Federal Government and enforced by the U.S. Department of Labor, Wages and Hours Division, and Florida's Minimum Wage requirements in Article X, Section 24(f) of the Florida Constitution and enforced by the Florida Legislative by statute or the State Agency for Workforce Innovation by rule, whichever is higher.

**Sovereign Immunity.** Town expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Nothing will be deemed as a waiver of immunity or the limitations of liability of Town beyond any statutory



limited waiver of immunity or limits of liability. Nothing will inure to the benefit of any third party for the purpose of allowing any claim against the Town, which would otherwise be barred under the law.

**Compliance with Federal Standards** All items to be purchased under this Contract must be in accordance with all governmental standards to include, but not limited to, those issued by the Occupational Safety and Health Administration, the National Institute of Occupational Safety Hazards, and the National Fire Prevention Association.

**TOWN OF MONTVERDE, FLORIDA**

**CONTRACTOR:** \_\_\_\_\_

\_\_\_\_\_  
Paul Larino, Town Manager

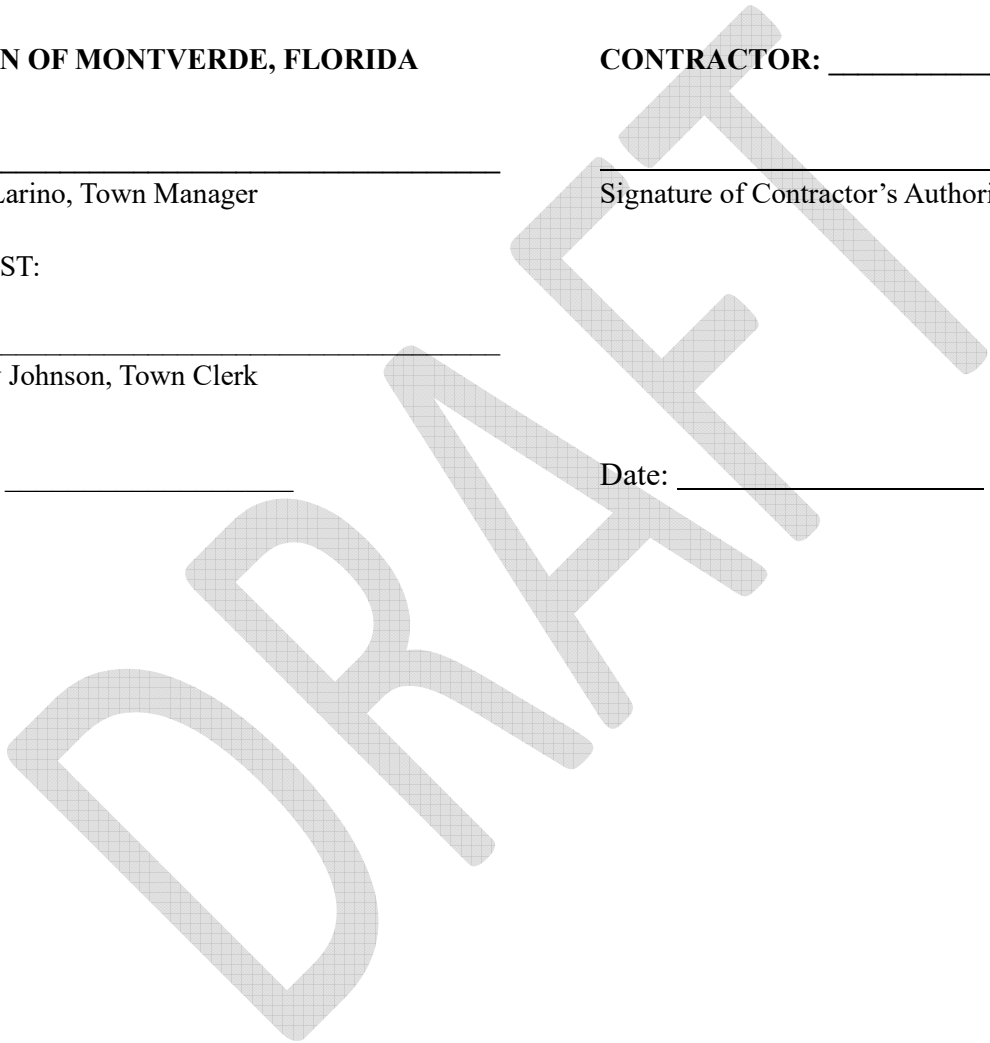
\_\_\_\_\_  
Signature of Contractor's Authorized Official

ATTEST:

\_\_\_\_\_  
Sandy Johnson, Town Clerk

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

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



**APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that: No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

**[INSERT CONTRACTOR NAME]**

\_\_\_\_\_  
Signature of Contractor’s Authorized Official

\_\_\_\_\_  
Name and Title of Contractor’s Authorized Official

\_\_\_\_\_  
Date

**STANDARD GENERAL CONDITIONS OF THE  
CONTRACT BETWEEN OWNER AND DESIGN-BUILDER**

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE 1 – DEFINITIONS AND TERMINOLOGY .....	1
1.01 Defined Terms.....	1
1.02 Terminology .....	6
ARTICLE 2 – PRELIMINARY MATTERS.....	7
2.01 Delivery of Bonds and Evidence of Insurance.....	7
2.02 Copies of Documents .....	7
2.03 Conceptual Documents.....	7
2.04 Before Starting the Work .....	8
2.05 Authorized Representatives.....	8
2.06 Initial Conference.....	8
2.07 Review of Schedules .....	8
2.08 Electronic Transmittals .....	9
ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE .....	9
3.01 Contract Documents .....	9
3.02 Reference Standards.....	10
3.03 Resolving Discrepancies .....	10
3.04 Ownership and Reuse of Documents.....	10
ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK .....	11
4.01 Commencement of Contract Times.....	11
4.02 Starting the Work.....	11
4.03 Progress Schedule .....	11
4.04 Delays in Design-Builder’s Progress .....	11
ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS .....	12
5.01 Availability of Lands .....	12
5.02 Use of Site and Other Areas.....	13
5.03 Reference Points .....	13
5.04 Differing Site Conditions .....	14

5.05	Underground Facilities.....	14
5.06	Hazardous Environmental Conditions at Site .....	16
ARTICLE 6 – BONDS AND INSURANCE.....		17
6.01	Performance, Payment, and Other Bonds.....	17
6.02	Insurance—General Provisions.....	18
6.03	Design-Builder’s Insurance.....	19
6.04	Owner’s Liability Insurance .....	22
6.05	Property Insurance.....	22
6.06	Waiver of Rights.....	24
6.07	Receipt and Application of Property Insurance Proceeds .....	25
ARTICLE 7 – DESIGN-BUILDER’S RESPONSIBILITIES.....		25
7.01	Design Professional Services.....	25
7.02	Construction.....	25
7.03	Supervision and Superintendence of Construction .....	26
7.04	Labor; Working Hours .....	26
7.05	Services, Materials, and Equipment .....	26
7.06	“Or Equals” and Substitutions.....	26
7.07	Concerning Project Design Professionals, Construction Subcontractors, Suppliers, and Others .....	27
7.08	Patent Fees and Royalties.....	28
7.09	Permits and Utility Charges.....	29
7.10	Taxes .....	29
7.11	Laws and Regulations.....	29
7.12	Record Documents.....	29
7.13	Safety and Protection .....	30
7.14	Safety Representative .....	31
7.15	Hazard Communication Programs .....	31
7.16	Emergencies.....	31
7.17	Post-Construction Phase.....	31
7.18	Design-Builder’s General Warranty and Guarantee .....	31
7.19	Indemnification .....	32
ARTICLE 8 – SUBMITTALS.....		33
8.01	Design-Builder’s Preparation of Submittals.....	33

8.02	Owner’s Review of Submittals .....	34
ARTICLE 9 – OTHER CONSTRUCTION .....		35
9.01	Other Work .....	35
9.02	Coordination .....	35
9.03	Legal Relationships.....	36
ARTICLE 10 – OWNER’S RESPONSIBILITIES .....		37
10.01	General.....	37
10.02	Insurance.....	38
10.03	Limitations on Owner’s Responsibilities.....	38
10.04	Undisclosed Hazardous Environmental Condition.....	38
10.05	Owner’s Site Representative.....	39
10.06	Owner’s Consultants and Managers.....	39
10.07	Safety Programs .....	39
10.08	Permits and Approvals .....	39
ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK.....		39
11.01	Amending and Supplementing Contract Documents .....	39
11.02	Authorized Changes in the Work .....	40
11.03	Unauthorized Changes in the Work.....	40
11.04	Changes Involving the Design .....	40
11.05	Change of Contract Price .....	40
11.06	Change of Contract Times.....	42
11.07	Execution of Change Orders .....	42
11.08	Notice to Sureties.....	42
ARTICLE 12 – COST OF THE WORK ADJUSTMENTS; UNIT PRICE WORK.....		43
12.01	Cost of the Work .....	43
12.02	Unit Price Work.....	45
ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION.....		46
13.01	Access to Construction.....	46
13.02	Tests, Inspections, and Approvals.....	46
13.03	Uncovering Construction .....	47
13.04	Defective Construction .....	47
13.05	Owner May Correct Defective Construction.....	48

13.06	Costs.....	48
13.07	Owner’s Acceptance of Defective Construction .....	48
13.08	Owner May Stop Construction .....	49
ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION.....		49
14.01	Progress Payments.....	49
14.02	Design-Builder’s Warranty of Title.....	51
14.03	Substantial Completion.....	51
14.04	Partial Use or Occupancy .....	52
14.05	Final Inspection .....	53
14.06	Final Payment.....	53
14.07	Waiver of Claims .....	54
14.08	Correction Period.....	54
ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION .....		55
15.01	Owner May Suspend Work .....	55
15.02	Owner May Terminate for Cause.....	55
15.03	Owner May Terminate for Convenience .....	56
15.04	Design-Builder May Stop Work or Terminate.....	56
ARTICLE 16 – DISPUTES.....		57
16.01	Methods and Procedures.....	57
ARTICLE 17 – MISCELLANEOUS.....		57
17.01	Giving Notice.....	57
17.02	Computation of Times .....	58
17.03	Cumulative Remedies .....	58
17.04	Limitation of Damages .....	58
17.05	No Waiver .....	58
17.06	Survival of Obligations .....	58
17.07	Controlling Law .....	58
17.08	Headings.....	59

# STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*: Written or graphic instruments issued by Owner prior to the opening of Proposals which clarify, correct, or change the Request for Qualifications, Request for Proposals, or the proposed Contract Documents, including the Conceptual Documents.
  2. *Agreement*: The written instrument, executed by Owner and Design-Builder, that sets forth the Contract Price and Contract Times, identifies the parties, and designates the specific items that are Contract Documents.
  3. *Application for Payment*: The form which is to be used by Design-Builder during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Authorized Representative*: The individual designated by a party to represent it with respect to this Contract, as indicated in the Agreement.
  5. *Change Order*: A document which is signed by Design-Builder and Owner and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  6. *Claim*: A demand or assertion by Owner or Design-Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A request or proposal for a Change Order is not a Claim.
  7. *Conceptual Documents*: The documents prepared by or for the Owner to describe the Work to be performed, issued to Proposers during the design-builder selection process, and expressly identified in the Agreement.
  8. *Constituent of Concern*: Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other Laws or Regulations regulating, relating to, or imposing liability or

standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction*: The part of the Work that consists generally of making physical improvements at the Site, and is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work (including any correction of defective Construction), and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents and Construction Drawings and Construction Specifications, as duly modified.
10. *Construction Drawings*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or specific portions of the Construction, and consisting of drawings, diagrams, illustrations, schedules, and other data that graphically show the scope, extent, and character of the Construction (or specific portions of the Construction) to be performed by or for Design-Builder. Construction Drawings are not Contract Documents.
11. *Construction Specifications*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or a specific portion of the Construction, and consisting of written requirements for materials, equipment, systems, standards, workmanship, and administrative procedures as applied to the Construction (or a specific portion of the Construction). Construction Specifications are not Contract Documents.
12. *Construction Subcontract*: A written agreement between Design-Builder and a Construction Subcontractor for provision of all or a portion of the Construction, and any delegated Design Professional Services.
13. *Construction Subcontractor*: An individual or entity (other than a Supplier) having a direct contract with Design-Builder or with any other Construction Subcontractor for the performance of a part of the Construction, and any delegated Design Professional Services.
14. *Contract*: The entire and integrated written agreement between Owner and Design-Builder concerning the Work.
15. *Contract Documents*: Those items so designated in the Agreement, and which together comprise the Contract.
16. *Contract Price*: The money that Owner has agreed to pay Design-Builder for completion of the Work in accordance with the Contract Documents. In each instance in this Contract that provides for an equitable adjustment in the Contract Price, if the parties cannot agree on the amount of adjustment, RSMeans construction cost data adjusted using the RSMeans City Cost Index (CCI) shall be used for validation of costs and the CPI Inflation Calculator (<https://data.bls.gov/cgi-bin/cpicalc.pl>) shall be used to adjust the RSMeans cost data for changes due to inflation to determine an equitable adjustment amount.
17. *Contract Times*: The numbers of days or the dates stated in the Agreement to (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
18. *Design-Builder*: The individual or entity with which Owner has contracted for performance of the Work, as designated in the Agreement.



19. *Design Professional Services:* That part of the Work comprised of the furnishing of engineering, surveying, architecture, and other design services, and including but not limited to providing research, analysis, and conclusions regarding engineering and related matters; exercising professional judgment with respect to technical issues; the preparation of plans, reports, calculations, models, schematics, drawings, specifications, Design Submittals, the Construction Drawings, Construction Specifications, and other instruments of service; other services included in the Contract Documents and required to be performed by or under the responsible charge of licensed design professionals; and the review of shop drawings, observation of construction, response to requests for information or interpretation, analysis of the technical aspects of Change Orders, and other engineering and related professional services provided by or for licensed design professionals during Construction.
20. *Design Agreement:* A written agreement between Design-Builder and a design firm or entity for provision of Design Professional Services.
21. *Design Submittal:* A Submittal that pursuant to Laws and Regulations or this Contract must be prepared by or under the supervision of a licensed engineer or other licensed design professional, including drawings, specifications, Construction Drawings, Construction Specifications, and revisions to such documents (but not including Record Documents).
22. *Effective Date of the Contract:* The date indicated in the Agreement on which the Contract becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
23. *Engineer:* The Project Design Professional identified as Engineer in the Agreement, and engaged by Design-Builder to provide engineering and related professional services under a Design Agreement.
24. *Hazardous Environmental Condition:* The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations:* Any and all applicable laws, statutes, rules, regulations, ordinances, binding resolutions, codes, decrees, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens:* Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone:* A principal event in the performance of the Work that the Contract requires Design-Builder to achieve by an intermediate completion date or by a time prior to Substantial Completion of Construction.
28. *Notice of Award:* The written notice by Owner to a Proposer stating that Owner will enter into the design-build contract with the Proposer.

29. *Notice to Proceed*: A written notice by Owner to Design-Builder fixing the date on which the Contract Times will commence to run and on which Design-Builder shall start to perform the Work.
30. *Owner*: The individual or entity with which Design-Builder has contracted regarding the Work, and which has agreed to pay Design-Builder for the performance of the Work, pursuant to the terms of the Contract.
31. *Owner's Consultant*: An individual or entity with which the Owner has contracted to furnish services (typically including planning, preparation of Conceptual Documents, and advisory services) to Owner with respect to the Project, and which is identified as such in the Agreement.
32. *Owner's Site Representative*: A representative of Owner at the Site, as indicated in Paragraph 10.05.
33. *Project*: The total undertaking to be accomplished for Owner by engineers, consultants, Design-Builder, subcontractors, and others, including planning, study, design, construction, testing, start-up, and commissioning, and of which the Work to be performed under the Contract Documents is a part.
34. *Project Design Professionals*: The Engineer and any other independent entities or individuals, or employees of Design-Builder, engaged by Design-Builder or a Construction Subcontractor to provide Design Professional Services with respect to a portion of the Work.
35. *Proposal*: The documents submitted by Design-Builder in response to the Request for Proposals, setting forth technical concepts, proposed prices, and other conditions for the Work to be performed, and stating any proposed revisions, modifications, clarifications, exceptions, or supplements to the proposed Contract Documents.
36. *Proposal Amendment*: A Contract Document that is prepared after submittal of Design-Builder's Proposal; identifies mutually agreed revisions, modifications, exceptions, supplements, and clarifications to the Proposal or proposed Contract Documents; and is executed by Owner and Design-Builder.
37. *Proposer*: An entity that submits a Statement of Qualifications or Proposal to Owner.
38. *Record Documents*: The record copy of all Construction Drawings, Construction Specifications, Addenda, Change Orders, Work Change Directives, and approved Submittals maintained by Design-Builder at the Site, including any annotations to such documents made by Design-Builder during Construction.
39. *Record Drawings and Record Specifications*: Documents depicting the completed Project, or a specific portion of the completed Project, based on or comprised of the Record Documents delivered to Owner by Design-Builder at the completion of the Construction.
40. *Request for Proposals*: The document prepared by or for Owner specifying and describing Owner's objectives, the procedures to be followed in preparing and submitting a Proposal, and the process for evaluating Proposals and awarding a contract.
41. *Request for Qualifications*: The document prepared by or for Owner requesting that Proposers submit a Statement of Qualifications with respect to their candidacy for selection as Design-Builder.

42. *Schedule of Values*: A schedule, prepared and maintained by Design-Builder, allocating portions of the Contract Price to various portions of the Work, and used as the basis for reviewing Design-Builder's Applications for Payment.
43. *Site*: Lands or areas indicated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of Design-Builder.
44. *Statement of Qualifications*: The document submitted by a Proposer in response to the Request for Qualifications, including any completed forms, attachments, and exhibits.
45. *Submittal*: A written or graphic document, prepared by or for Design-Builder, which the Contract Documents require the Design-Builder to submit to the Owner. Submittals may include reports, preliminary drawings and specifications, cost estimates, proposed Construction Drawings and Construction Specifications, progress schedules, cash flow projections, Schedules of Values, shop drawings, product data, samples, delegated designs, certifications, proposed modifications to the Construction Drawings and Construction Specifications, results of tests and evaluations, results of source quality control testing and inspections, results of field or Site quality control testing and evaluations, sustainable design information, information on special procedures, operations and maintenance data, sustainable design closeout information, record documents, records of spare parts and extra stock materials, and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner or not, are not Contract Documents. Claims, notices, Change Orders, Applications for Payment, and requests for information/interpretation are not Submittals.
46. *Substantial Completion*: The time at which the Construction (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction (or the specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Construction refer to Substantial Completion thereof.
47. *Supplementary Conditions*: The part of the Contract Documents which amends or supplements these General Conditions.
48. *Supplier*: A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Design-Builder or with any Construction Subcontractor to furnish materials or equipment to be incorporated in the Work by Design-Builder or a Construction Subcontractor, and any lessor of rental equipment used by Design-Builder or a Construction Subcontractor during Construction at the Site.
49. *Technical Data*: Data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding (a) subsurface conditions at the Site, (b) physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), or (c) environmental conditions at the Site, that are set forth in any geotechnical or environmental report prepared for the Project and relied upon by Design-Builder in agreeing to a price (either stipulated, or a Guaranteed Maximum Price) that includes Construction.
50. *Underground Facilities*: All underground lines, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems, including but not

limited to those that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, fire or police signal systems, or traffic or other control systems; and any encasements containing such facilities or systems.

51. *Underground Facilities Data:* Information and data shown or indicated in the Contract Documents or otherwise provided to Design-Builder by Owner with respect to existing Underground Facilities at or adjacent to the Site.
52. *Unit Price Work:* Work to be paid for on the basis of unit prices.
53. *Work:* The entire design and construction or the various separately identifiable parts thereof required to be performed or furnished by Design-Builder under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents and all labor, services, and documentation necessary to produce such Design Professional Services and Construction; furnishing, installing, and incorporating all materials and equipment into such Construction; and related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
54. *Work Change Directive:* A written directive to Design-Builder, issued on or after the Effective Date of the Contract, signed by Owner, ordering an addition, deletion or revision in the Work.

#### 1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B are not defined terms that require initial capital letters, but when used in the Contract Documents have the indicated meanings.
- B. *Intent of Certain Terms or Adjectives:*
  1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
  2. The word “defective,” when modifying the word “Construction” refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner’s final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.
  3. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  4. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.
  5. The words “perform” or “provide” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

6. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design-Builder, “provide” is implied.
7. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Bonds and Evidence of Insurance***

- A. *Bonds*: When Design-Builder delivers the executed Agreements to Owner, Design-Builder shall also deliver to Owner such Bonds as Design-Builder may be required to furnish in accordance with Paragraph 6.01.A.
- B. *Evidence of Insurance*: Before any Work is started, Design-Builder and Owner shall each deliver to the other those certificates of insurance that Design-Builder and Owner respectively are required to purchase and maintain in accordance with Article 6.

### **2.02 *Copies of Documents***

- A. Owner shall furnish to Design-Builder four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract. Owner shall make such original printed record version of the Contract available to Design-Builder for review.

### **2.03 *Conceptual Documents***

- A. *Design-Builder’s Review of Conceptual Documents*:
  1. Design-Builder acknowledges that the Conceptual Documents furnished by Owner are preliminary and incomplete, and subject to stated limitations and reservations.
  2. Design-Builder shall carefully review, analyze, and verify the contents and suitability of the Conceptual Documents before proceeding with the Work (including but not limited to the Design Professional Services).
  3. Design-Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy that Design-Builder may discover in the Conceptual Documents, whether during such review or at any later point.
  4. Upon receipt of a report from Design-Builder that there is a conflict, error, ambiguity, or discrepancy in the Conceptual Documents, Owner shall either provide a written interpretation, clarification, or correction to Design-Builder, or authorize Design-Builder to correct or resolve the issue under a Change Order providing an equitable adjustment in Contract Times or Contract Price, or both.
  5. Design-Builder shall not proceed with any Work affected by a reported conflict, error, ambiguity, or discrepancy in the Conceptual Documents until the issue is resolved.
- B. Owner shall not be responsible for any deficiency in the Conceptual Documents that Design-Builder does not discover or report to Owner.

- C. Subject to the foregoing review and reporting obligations, Design-Builder may use the Conceptual Documents as a partial basis for performing or furnishing Design Professional Services, including the preparation of Design Submittals such as the Construction Drawings and Construction Specifications, but despite any such use of the Conceptual Documents the Design-Builder nonetheless shall be responsible to Owner for the quality and soundness of the Design Professional Services.

#### 2.04 *Before Starting the Work*

- A. *Preliminary Schedules:* Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design-Builder shall submit the following to Owner for Owner's timely review:
  - 1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  - 2. A preliminary schedule of Submittals (including Design Submittals) which will list each required Submittal and the times for submitting, reviewing, and processing each Submittal;
  - 3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and
  - 4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

#### 2.05 *Authorized Representatives*

- A. The Authorized Representative for each party has been designated in the Agreement. A party may change its Authorized Representative at any time by giving notice to the other party of the name, mailing and delivery addresses, e-mail address, and telephone numbers of the new Authorized Representative.

#### 2.06 *Initial Conference*

- A. Within 20 days after the Contract Times start to run, Design-Builder will arrange a conference attended by Owner and Design-Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in Paragraph 2.04.A, procedures for handling Submittals, processing Applications for Payment, maintaining required records, and other matters.

#### 2.07 *Review of Schedules*

- A. Not less than 10 days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design-Builder will arrange a conference attended by Design-Builder, Owner, and others as appropriate to review and discuss the schedules submitted in accordance with Paragraph 2.04.A. Design-Builder shall have an additional 10 days after the conference to make corrections and adjustments and to complete and resubmit the schedules for Owner's acceptance. No progress payment shall be made to Design-Builder until Design-Builder submits schedules that comply with the following requirements:

1. Design-Builder's progress schedule shall provide an orderly progression of the Work to completion within any specified Milestones and the Contract Times.
2. Design-Builder's schedule of Submittals shall provide a workable arrangement for submitting, reviewing, and processing Submittals in accordance with Article 8.
3. Design-Builder's Schedule of Values shall provide a reasonable allocation of the Contract Price to component parts of the Work.

#### 2.08 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner and Design-Builder may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. Design-Builder shall submit all drawings to Owner in Adobe \*.PDF and AutoCAD \*.DWG format. All other documents shall be provided in Adobe \*.PDF format or, when specifically requested by Owner, in Microsoft Office compatible format (e.g., \*.DOCX, \*.XLSX, etc.).
- C. If the Contract does not establish protocols for electronic or digital transmittals, then Owner and Design-Builder shall jointly develop such protocols.
- D. Unless expressly stated otherwise elsewhere in this Contract, Design-Builder shall not be obligated to furnish proprietary documents to Owner in any executable, native-file format.
- E. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

### **ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE**

#### 3.01 *Contract Documents*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents to require the design and construction of a functionally complete project (or part thereof).
- C. Design-Builder shall prepare or furnish Construction Drawings and Construction Specifications that are in accord with the Contract Documents and that describe a functionally complete Project (or part thereof) to be constructed in accordance with such Construction Drawings and Construction Specifications, as duly modified.
- D. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
- E. Design-Builder will furnish or perform all labor, documentation, services (including professional services), materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called, for at no additional cost to Owner. Owner reserves the right to direct purchase materials from Design-Builder's suppliers for purposes of tax exemption.

### 3.02 *Reference Standards*

#### A. *Standards, Specifications, Codes, Laws or Regulations:*

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, Design-Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner or its officers, directors, members, partners, employees, agents, consultants, or subcontractors any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Resolving Discrepancies*

- A. If there is a discrepancy between (1) the Conceptual Documents or other Contract Documents issued with the Request for Qualifications or Request for Proposals and (2) the Proposal, the Proposal will control.
- B. If there is a discrepancy between (1) the Conceptual Documents, other Contract Documents issued with the Request for Qualifications or Request for Proposals, or the Proposal and (2) the Proposal Amendment, the Proposal Amendment will control.
- C. If there is a discrepancy between (1) the Contract Documents and (2) the Construction Drawings and Construction Specifications, the Contract Documents will control unless Design-Builder gave notice of the discrepancy in a Submittal, and Owner approved the Submittal, pursuant to the provisions of Article 8.

### 3.04 *Ownership and Reuse of Documents*

- A. All documents prepared for or furnished to Owner by Design-Builder pursuant to this Contract (including but not limited to Design Submittals) are instruments of service. With respect to such documents:
  1. Design-Builder shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in the documents.
  2. During the course of the Project, Design-Builder will provide copies of Design Submittals to Owner for purposes of review and comment. Owner may retain copies of such documents for its records.
  3. Owner may use its copy of the Record Drawings and Record Specifications for Owner's purposes in operating and maintaining the constructed facilities.
  4. Upon Owner's termination of this Contract for cause pursuant to Paragraph 15.02, Owner shall receive a limited, non-exclusive license to use any completed Design Submittals in continuing the Project.
  5. The documents prepared or furnished by Design-Builder under this Contract, regardless of ownership, transfer, license, completion status, or termination of the Contract, are for



Design-Builder's use, and are not intended or represented to be suitable for use on the Project by Owner or any party other than Design-Builder, or for reuse by Owner or others on extensions of the Project or on any other project, except as otherwise stated in this Contract. Any use or reuse by Owner or others on Owner's behalf will be at Owner's sole risk, and without liability or legal exposure to Design-Builder, the Project Design Professionals, or their subconsultants.

#### **ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

##### **4.01 *Commencement of Contract Times***

A. The Contract Times will commence to run on the Effective Date of the Contract.

##### **4.02 *Starting the Work***

A. Design-Builder shall start to perform the Work as of the Effective Date of the Contract. No Construction shall be done at the Site prior to the Effective Date of the Contract.

##### **4.03 *Progress Schedule***

A. Owner may rely on the progress schedule established in accordance with Paragraph 2.04, as duly adjusted, in planning and conducting ongoing operations and other work at the Site.

B. Design-Builder shall adhere to the progress schedule established in accordance with Paragraph 2.04 as it may be adjusted from time to time, as provided below:

1. Design-Builder shall submit to Owner proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Owner shall accept such adjustments provided that Owner, in planning and conducting ongoing operations and other work at the Site, has not reasonably relied on the schedule element that is proposed to be adjusted. If Owner has so relied, then Owner and Design-Builder shall promptly meet and seek a resolution that addresses the objectives of both parties, or adjust the Contract Price.

2. Design-Builder shall submit proposed adjustments in the progress schedule that will change the Contract Times (including Milestones) in accordance with the requirements of Paragraph 11.06. Such adjustments may only be made by a Change Order.

C. *Continuing the Work:* Design-Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Design-Builder and Owner may otherwise agree in writing.

##### **4.04 *Delays in Design-Builder's Progress***

A. If Owner or anyone for whom Owner is responsible delays, disrupts, or interferes with the performance or progress of the Work, then Design-Builder shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.

B. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference within the control of Design-Builder. Delay, disruption, and interference attributable to and within the control of a Project Design Professional, Construction Subcontractor, or Supplier shall be deemed to be delays within the control of Design-Builder.

- C. If Design-Builder's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Design-Builder, and those for which they are responsible, then Design-Builder shall be entitled to an equitable adjustment in Contract Times. Design-Builder's entitlement to such an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design-Builder's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  2. Abnormal weather conditions;
  3. Acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 9); and
  4. Acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 9.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Design-Builder.
- G. If Design-Builder seeks an adjustment in Contract Price or Contract Times under this paragraph, Design-Builder shall submit a request for a Change Order to Owner within 30 days of the commencement of the delaying, disrupting, or interfering event.

## **ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Design-Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Design-Builder will have to comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Design-Builder with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner's interest therein.
- C. Design-Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

## 5.02 *Use of Site and Other Areas*

### A. *Limitation on Use of Site and Other Areas:*

1. Design-Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of Work, Design-Builder shall promptly settle with such other party by negotiation, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law.
3. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's consultants, and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design-Builder's performance of the Construction.

B. *Removal of Debris:* During the performance of the Construction, Design-Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. *Cleaning:* Prior to Substantial Completion, Design-Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design-Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

## 5.03 *Reference Points*

- A. Design-Builder shall be responsible for laying out the Work and shall protect and preserve reference points and property monuments established by Owner, and shall make no changes or relocations of such reference points or monuments without the prior written approval of Owner. Design-Builder shall report to Owner whenever any reference point or property monument is lost or destroyed, or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 5.04 *Differing Site Conditions*

- A. Design-Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site (whether discovered during investigation of the Site or during Construction) which differ materially from those indicated in the Contract Documents, or in any Technical Data, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.
- B. Owner will investigate the Site conditions promptly after receiving the notice. Design-Builder shall supplement the notice by promptly submitting to Owner any additional information regarding schedule and cost impacts, and a specific request for a Change Order. Owner shall then make a determination regarding the site condition and the impact, if any, on Contract Price and Contract Times. If the conditions do materially so differ and cause an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11.
- C. No request by Design-Builder for an equitable adjustment under this Paragraph 5.04 shall be allowed unless Design-Builder has given the written notice required.
- D. The provisions of this Paragraph 5.04 are not intended to apply to a Hazardous Environmental Condition or Underground Facility uncovered or revealed at the Site.

#### 5.05 *Underground Facilities*

- A. *Procedure for Identifying Underground Facilities:* Promptly after the Effective Date of the Contract, Design-Builder shall review the Underground Facilities Data furnished by Owner and use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as a basis for establishing a procedure ("Underground Facilities Procedure") for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site. Design-Builder shall establish and use the Underground Facilities Procedure to aid in the provision of Design Professional Services and the performance of Construction, and to reduce and manage risks associated with Underground Facilities. Such Underground Facilities Procedure shall take into account the Site and the nature of the Project.
  - 1. The Underground Facilities Procedure shall include a plan to keep Underground Facilities information current as Design-Builder proceeds with the provision of Design Professional Services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.
  - 2. To manage the potential impact of design changes on Underground Facilities, Design-Builder shall modify or reapply the Underground Facilities Procedure as the design progresses and changes.
- B. *Design-Builder's Responsibilities:* Unless otherwise expressly provided in the Contract, Design-Builder shall have full responsibility for the following; and, subject to the provisions of Paragraphs 5.05.C, D, and E, the cost of all of the following will be included in the Contract Price:

1. Establishing and executing the Underground Facilities Procedure referred to in Paragraph 5.05.A, including updating, modification, and reapplication duties;
  2. Coordinating the Work with the owners (including Owner) of such Underground Facilities, during the provision of Design Professional Services and Construction;
  3. Verifying the actual location of specific Underground Facilities through exposure, as needed for the Design Professional Services;
  4. Complying with applicable state and local utility damage prevention Laws and Regulations during Construction; and
  5. The safety and protection of all existing Underground Facilities at the Site, and repairing any damage to such Underground Facilities resulting from the Construction, subject to the provisions of Paragraph 5.05.D.
- C. *Results of Design-Builder's Execution of Underground Facilities Procedure:* If, during the execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, the Design-Builder identifies an Underground Facility that was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, causing an increase or decrease in the Design-Builder's cost of, or the time required for, providing Design Professional Services or performing the Construction, then Design-Builder shall submit to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the identification of the Underground Facility in question.
- D. *Underground Facility Found During Construction:* If Design-Builder believes that an Underground Facility that is uncovered, exposed, or revealed at the Site during Construction was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and also that such Underground Facility was not identified or mapped with reasonable accuracy despite Design-Builder's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, then Design-Builder shall promptly give written notice to Owner, and supplement the notice by submitting to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the uncovering or revealing of the Underground Facility in question.
1. *Owner's Review:* Owner will investigate the Underground Facility found during Construction promptly after receiving the notice. If Owner concurs with Design-Builder that the Underground Facility that is uncovered, exposed, or revealed at the Site was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and further was not identified or mapped with reasonable accuracy despite Design-Builder's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, causing an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the actual location, then an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11. If Owner does not concur with Design-Builder, then Owner shall so indicate in writing, with a specific explanation of the reason for non-concurrence.

2. No request by Design-Builder for an equitable adjustment under Paragraph 5.05.D shall be allowed unless Design-Builder has given the written notice required.
- E. *Inadequate Establishment or Execution of Underground Facilities Procedure:* If Design-Builder does not establish an Underground Facilities Procedure that is (1) adequate for the Site and the nature of the Project and (2) consistent with the guidelines set forth in ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," or Design-Builder does not adequately execute a duly established Underground Facilities Procedure, then Design-Builder shall bear all costs associated with the presence of an Underground Facility that was not identified or located with reasonable accuracy, including but not limited to delay, redesign, relocation, and increased Construction costs, if such Underground Facility would have been identified and located with reasonable accuracy by an adequate and properly executed Underground Facilities Procedure that was consistent with ASCE 38.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reliance by Design-Builder on Technical Data Authorized:* Design-Builder may rely on the accuracy of the Technical Data with respect to environmental conditions at the Site.
- B. Design-Builder shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- C. Design-Builder shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Design-Builder, Project Design Professionals, Construction Subcontractors, Suppliers, or anyone else for whom Design-Builder is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- D. If Design-Builder encounters, uncovers, or reveals a Hazardous Environmental Condition (whether during Site investigation or during Construction) whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Design-Builder or anyone for whom Design-Builder is responsible creates a Hazardous Environmental Condition, then Design-Builder shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.16); and (3) notify Owner (and promptly thereafter confirm such notice in writing). Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take corrective action, if any, and take such actions as are necessary to permit Owner to timely obtain required permits and provide Design-Builder the written notice required by Paragraph 5.06.E. If Design-Builder or anyone for whom Design-Builder is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- E. Design-Builder shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Design-Builder either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

- F. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the Design-Builder's failure to control, contain, or remove a Constituent of Concern brought to the Site by Design-Builder or by anyone for whom Design-Builder is responsible, or to a Hazardous Environmental Condition created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.H shall obligate Design-Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

## **ARTICLE 6 – BONDS AND INSURANCE**

### **6.01 *Performance, Payment, and Other Bonds***

- A. Design-Builder shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Design-Builder's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due, or until completion of the correction period specified in Paragraph 14.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other specific provisions of the Contract. Design-Builder shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. The bonds shall comply in all respects with s. 255.05, Florida Statutes.
- C. Design-Builder shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Design-Builder is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Design-Builder shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Design-Builder has failed to obtain a required bond, Owner may exclude the Design-Builder from the Site and exercise Owner's termination rights under Article 15.
- F. Upon request to either Owner or Design-Builder from any Construction Subcontractor, Project Design Professional, Supplier, or other person or entity claiming to have furnished

labor, services, materials, or equipment used in the performance of the Work, the recipient of the request shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Design-Builder shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Design-Builder shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. All insurance required by the Contract to be purchased and maintained by Design-Builder shall be primary and without contribution by insurance maintained by Owner.
- D. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly permitted in the Supplementary Conditions.
- E. Design-Builder shall require (a) its Construction Subcontractors and Engineer (and any other Project Design Professional that is an independent individual or entity) to purchase and maintain commercial general liability, automobile liability, workers’ compensation, employer’s liability, professional liability (as applicable), and umbrella or excess liability insurance, and (b) its Construction Subcontractors to purchase and maintain contractor’s pollution liability insurance. All such required insurance shall meet the same requirements for the applicable category of insurance established in this Contract for Design-Builder, unless otherwise indicated in the Supplementary Conditions.
- F. Design-Builder shall deliver to Owner, with copies to each additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Design-Builder has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Design-Builder shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if permitted) and deductibles, and evidence of insurance required to be purchased and maintained by Design-Builder’s Construction Subcontractors, Engineer, and any other Project Design Professional that is an independent individual or entity. Design-Builder may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- G. Owner shall deliver to Design-Builder, with copies to each additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Design-Builder or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any



confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- H. Failure of Owner or Design-Builder to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Design-Builder to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- I. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Design-Builder has failed to obtain and maintain required insurance, Owner may exclude the Design-Builder from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design-Builder or Design-Builder's interests.
- M. The insurance and insurance limits required herein shall not be deemed as a limitation on Design-Builder's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

#### 6.03 *Design-Builder's Insurance*

- A. *Workers' Compensation and Employer's Liability:* Design-Builder shall purchase and maintain workers' compensation and employer's liability insurance for:
  - 1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  - 3. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design-Builder's employees (by stop-gap endorsement in monopolist worker's compensation states).
  - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Design-Builder shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Design-Builder, on an occurrence basis, against:
  - 1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design-Builder's employees.
  - 2. Claims for damages insured by reasonably available personal injury liability coverage.
  - 3. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

- C. *Commercial General Liability—Form and Content:* Design-Builder’s commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. Design-Builder shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Design-Builder’s contractual indemnity obligations in Paragraph 7.19.
  3. Broad form property damage coverage.
  4. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  5. Underground, explosion, and collapse coverage.
  6. Personal injury coverage.
  7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Design-Builder demonstrates to Owner that the specified ISO endorsements are not commercially available, then Design-Builder may satisfy this requirement by providing equivalent endorsements.
  8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.
- D. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, shall not include any of the following:
1. Any modification of the standard definition of “insured contract.”
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs.
  4. Any exclusion of coverage relating to earth movement.
  5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability.
  6. Any limitation or exclusion based on the nature of Design-Builder’s work.
  7. Any professional liability exclusion broader in effect than ISO form CG 22 79 07 98.
- E. *Automobile liability:* Design-Builder shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- F. *Umbrella or excess liability:* Design-Builder shall purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general

liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall be procured on a “follow the form” basis as to each and every one of the underlying policies. Design-Builder may meet the combined limits of insurance (underlying policy plus applicable umbrella or excess) specified for employer’s liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy that follows the form of the underlying policy, as specified herein.

- G. *Contractor’s pollution liability insurance:* Design-Builder shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Design-Builder’s operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- H. *Additional insureds:* The Design-Builder’s commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and any individuals or entities identified as required additional insureds in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Design-Builder shall obtain all necessary endorsements to support these requirements.
- I. *Professional liability insurance:*
  - 1. Design-Builder shall be responsible for purchasing and maintaining professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which Design-Builder is legally liable.
  - 2. If in the performance of this Contract any Design Professional Services, or other professional engineering or similar services, are to be performed by an independent design professional, under direct contract to Design-Builder or at any lower contractual tier, then Design-Builder shall be responsible for assuring that such independent design professional purchases and maintains professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the independent design professional is legally liable.
  - 3. If a Construction Subcontractor at any tier will provide or furnish design, engineering, or other similar professional services under this Contract, as the result of a delegation of professional design responsibilities or otherwise, then Design-Builder shall assure that such Construction Subcontractor purchases and maintains applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable.
  - 4. Any professional liability insurance required under this Contract shall be maintained throughout the duration of the Contract and for a minimum of three years after Substantial Completion. For each claims-made professional liability policy furnished and

maintained to satisfy the requirements of this Paragraph 6.03.I, the retroactive date on the policy shall pre-date the commencement of furnishing services on the Project.

- J. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
1. Include at least the specific coverages provided in this Article.
  2. Be written for not less than the limits of coverage provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
  3. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days' prior written notice has been given to Design-Builder. Within 3 days of receipt of any such written notice, Design-Builder shall provide a copy of the notice to Owner and each other insured under the policy.
  4. Remain in effect at least until final payment and Design-Builder's departure from the Site (and longer if expressly required elsewhere in this Contract), and at all times thereafter when Design-Builder may be correcting, removing, or replacing defective Construction as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
  5. Provide applicable protection from claims that may arise out of or result from the performance of the Work, whether such performance is by Design-Builder, a Project Design Professional, any Construction Subcontractor or Supplier, or anyone directly or indirectly retained by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

6.04 *Owner's Liability Insurance*

- A. In addition to the liability insurance required to be provided by Design-Builder, the Owner, at Owner's option and expense, may purchase and maintain Owner's own liability insurance to protect Owner against claims which may arise with respect to the Project.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Design-Builder, and Design-Builder cannot rely upon Owner's liability policies for any of Design-Builder's obligations to the Owner or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Design-Builder shall purchase and maintain builder's risk insurance upon the Construction on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  1. Include the Owner and Design-Builder as named insureds, and all Construction Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
  2. Be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Construction, temporary buildings, falsework, and

materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Design-Builder.

3. Cover, as insured property, at least the following: (a) the Construction (including but not limited to all buildings, structures, foundations, excavations, underground property, pilings, underground pipes, flues, drains, wiring, cables, and the like) and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into the Construction, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent Construction but which are intended to provide working access to the Site, or to the Construction, or which are intended to provide temporary support for the Construction, including scaffolding, form work, fences, shoring, lighting, cribbing, falsework, and temporary structures.
4. Cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
5. Extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
6. Extend to cover damage or loss to insured property while in transit.
7. Allow for partial occupation or use of the Construction by Owner, such that those portions of the Construction that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
8. Provide for the waiver of claims and waiver of the insurer's subrogation rights, as set forth in Paragraph 6.06.
9. Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
10. Not include a co-insurance clause.
11. Include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
12. Include performance/hot testing and start-up.
13. Be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Construction by Owner, until the Construction is complete.

- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days' prior written notice has been given to the purchasing policyholder. Within 3 days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Construction prior to Substantial Completion of all the Work as provided in Paragraph 14.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Design-Builder) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Construction that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Construction not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Design-Builder elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Design-Builder's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Design-Builder, a Construction Subcontractor, or an employee of Design-Builder or a Construction Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.
- G. *Loss of Use and Delay in Start-up:* Unless otherwise expressly stated elsewhere in this Contract, the Owner is responsible, at its option, for purchase and maintenance of insurance to protect Owner against the loss of use or delays in start-up caused by property damage.

#### 6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage, but only up to the amount of payment, the insurers will have no rights of recovery against any insureds thereunder, or against any Project Design Professional or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Design-Builder waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Construction; and, in addition, waive all such rights against the Project Design Professionals, their consultants, all Construction Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the

proceeds of insurance held by Owner or Design-Builder as trustee or fiduciary, or otherwise payable under any policy so issued, or to losses or damages exceeding the amount paid by insurance.

- B. Design-Builder shall be responsible for assuring that each Construction Subcontract contains provisions whereby the Construction Subcontractor waives all rights against Owner, Design-Builder, all individuals or entities identified in the Supplementary Conditions as insureds, the Project Design Professionals, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Project.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall maintain such funds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Construction shall be repaired or replaced, the money so received applied on account thereof, and the Construction and the cost thereof covered by Change Order, if needed.

**ARTICLE 7 – DESIGN-BUILDER'S RESPONSIBILITIES**

7.01 *Design Professional Services*

- A. Design-Builder shall provide the Design Professional Services needed to successfully perform and complete the Work required under this Contract.
- B. *Standard of Care:* The standard of care for all Design Professional Services performed or furnished by Design-Builder under this Contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

7.02 *Construction*

- A. Design-Builder shall perform and furnish the Construction pursuant to the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified.
- B. Design-Builder shall keep Owner advised as to the progress of the Construction.

7.03 *Supervision and Superintendence of Construction*

- A. Design-Builder shall supervise, inspect, and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design-Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of Construction.
- B. At all times during the progress of Construction, the Design-Builder shall assign a competent resident superintendent who shall not be replaced without written notice to Owner except under extraordinary circumstances.

7.04 *Labor; Working Hours*

- A. Design-Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design-Builder shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, and in the absence of any Laws or Regulations to the contrary, Design-Builder may perform the Construction on legal holidays, during any or all hours of the day, and on any or all days of the week, at Design-Builder's sole discretion.

7.05 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Design-Builder shall furnish or cause to be furnished and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified by Owner or in the Construction Drawings or Construction Specifications, and unless specified otherwise shall be new and of good quality, free from defects. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

7.06 *"Or Equals" and Substitutions*

- A. If an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, then during the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may request that Owner authorize the use of other items of material or equipment, or items from other proposed suppliers, by including the proposed items in the proposed Construction Drawings or Construction Specifications, with required notice to Owner that the Submittal contains a variation from the Contract Documents. Owner in its sole discretion may approve the use of the item if Owner determines that the item is functionally



equal to that named and sufficiently similar so that no change in related Work will be required, taking into consideration whether the item:

1. Is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
  2. Will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  3. Has a proven record of performance and availability of responsive service; and
  4. Is not objectionable.
- B. *Effect of Owner's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- C. *Substitutes:* During the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may propose a substitute to an item of material or equipment that is required to be furnished by the Contract Documents. Any such proposal shall be made in a transmittal to Owner that is separate from and independent of any Design Submittals. The proposal shall describe the advantages, disadvantages, and changes in Contract Price or Contract Time associated with the proposed substitute. Approval of the proposed substitute shall be at Owner's sole discretion. If approved, the substitute item shall be incorporated in the Construction Drawings and Construction Specifications.
- D. *Design Professional Review:* Before Design-Builder transmits its proposal to Owner, the Project Design Professional that designed the portion of the Work affected by the proposed "or equal" or substitute shall review and approve the proposal.
- E. *Construction Drawings and Construction Specifications:* "Or equal" or substitute proposals with respect to items of material or equipment that are required in the Construction Drawings and Construction Specifications shall be considered proposed modifications of the Construction Drawings and Construction Specifications, and shall be governed by the provisions of Paragraph 8.02.H.

7.07 *Concerning Project Design Professionals, Construction Subcontractors, Suppliers, and Others*

- A. Design-Builder may retain Project Design Professionals, Construction Subcontractors, and Suppliers for the performance of parts of the Work. Such Project Design Professionals, Construction Subcontractors, and Suppliers must be acceptable to Owner.
- B. Design-Builder shall retain specific Project Design Professionals, Construction Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required to do so by the Contract Documents (including but not limited to the Proposal Amendment) as of the Effective Date.
- C. Prior to entry into any binding Design Agreement, Construction Subcontract, or purchase order, Design-Builder shall submit to Owner the identity of the proposed Project Design Professional, Construction Subcontractor, or Supplier (unless Owner has already deemed such proposed contractual party acceptable, during the bidding process or otherwise). Such proposed contractual party shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

- D. Owner may require the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work solely on the basis of substantive, reasonable objection after due investigation. Design-Builder shall submit an acceptable replacement for the rejected Project Design Professional, Construction Subcontractor, Supplier, or other entity.
- E. No acceptance by Owner of Engineer or of any Project Design Professional, Construction Subcontractor, Supplier, or other entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- F. Design-Builder shall be fully responsible to Owner for all acts and omissions of the Project Design Professionals, Construction Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work, just as Design-Builder is responsible for Design-Builder's own acts and omissions.
- G. Design-Builder shall be solely responsible for scheduling and coordinating the services and work of the Project Design Professionals, Construction Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- H. Design-Builder shall restrict all Project Design Professionals, Construction Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating directly with Owner, except in case of an emergency or a matter involving public health, safety, or welfare, or as otherwise expressly allowed herein.
- I. Owner may furnish to any Project Design Professional, Construction Subcontractor, or Supplier, to the extent practicable, information about amounts paid to Design-Builder on account of Work performed for Design-Builder by the requesting party.
- J. Nothing in the Contract Documents:
  - 1. Shall create for the benefit of any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity any contractual relationship between Owner and such third-party individual or entity; nor
  - 2. Shall create any obligation on the part of Owner to pay or to see to the payment of any money due any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity except as may otherwise be required by Laws and Regulations.

#### 7.08 *Patent Fees and Royalties*

- A. Design-Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents or other Contract Documents for use in the performance of the Construction, and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then Owner has disclosed the existence of such rights to Design-Builder in the Conceptual Documents or other Contract Documents.
- B. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner and Owner's Consultant, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all

claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device, except those required by the Contract Documents.

- C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design-Builder and its officers, directors, members, partners, employees or agents, Project Design Professionals, Construction Subcontractors, and Suppliers from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device required by the Contract Documents, but not identified by Owner as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

#### 7.09 *Permits and Utility Charges*

- A. The Contract Documents allocate responsibility for obtaining and paying for specified permits, licenses, certificates of occupancy, and approvals of governmental authorities having jurisdiction over the Work. Each party shall assist the other, when necessary, in obtaining such permits, licenses, certificates, and approvals.
- B. Design-Builder shall pay all charges of utility owners for temporary service to the Work. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work, and for capital costs related thereto.

#### 7.10 *Taxes*

- A. Design-Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design-Builder in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

#### 7.11 *Laws and Regulations*

- A. Design-Builder shall give all notices required by and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design-Builder's compliance with any Laws or Regulations.
- B. If Design-Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design-Builder shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

#### 7.12 *Record Documents*

- A. Design-Builder shall maintain the Record Documents in good order, in a safe place at the Site. Design-Builder shall annotate the Record Documents to show all changes and clarifications made (whether in the field or otherwise) during performance of Construction. The Record

Documents, as annotated, will be available to Owner for reference. Upon completion of the Construction, Design-Builder shall deliver the Record Documents, as annotated, to Owner.

- B. After receipt and review of the Record Documents from Design-Builder upon completion of Construction, the Owner may comment on any possible inaccuracies. After Owner and Design-Builder collaboratively address any such comments, the Record Documents shall be deemed to be Record Drawings and Record Specifications.
- C. The Record Drawings and Record Specifications are Contract Documents, and are binding upon Design-Builder with respect to its obligations to comply with the Contract Documents, including but not limited to correction period responsibilities and warranty obligations.

#### 7.13 *Safety and Protection*

- A. Design-Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Construction Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Design-Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. All persons on the Site or who may be affected by the Work;
  - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation, or replacement in the course of Construction.
- B. Design-Builder shall comply with applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Builder shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. Design-Builder shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Design-Builder shall inform Owner of the specific requirements of Design-Builder's safety program with which Owner and its employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.13.A.2 or 7.13.A.3 caused, directly or indirectly, in whole or in part, by Design-Builder, any Construction Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Builder.
- F. Design-Builder's duties and responsibilities for safety and for protection of the Construction shall continue until such time as all the Work is completed, Owner has issued a notice to

Design-Builder in accordance with Paragraph 14.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion), and Design-Builder has left the Site.

- G. Design-Builder's duties and responsibilities for safety and protection shall resume whenever Design-Builder or any Construction Subcontractor, Supplier, or other representative returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Safety Representative*

- A. Design-Builder shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.15 *Hazard Communication Programs*

- A. Design-Builder shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design-Builder is obligated to act to prevent threatened damage, injury or loss. Design-Builder shall give Owner prompt written notice if Design-Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design-Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.17 *Post-Construction Phase*

- A. Design-Builder shall:
  1. Provide assistance in connection with the start-up and testing of any equipment or system.
  2. Assist Owner in training staff to operate and maintain the Work.

7.18 *Design-Builder's General Warranty and Guarantee*

- A. Design-Builder warrants and guarantees to Owner that Design-Builder will perform and complete the Construction as required by the Contract Documents, and that all Construction will be in accordance with the Contract Documents, the Construction Drawings, and the Construction Specifications (as duly modified in accordance with the Contract), and will not be defective.
- B. Design-Builder's warranty and guarantee hereunder excludes defects or damage caused by:
  1. Abuse, modification or improper maintenance or operation by persons other than Design-Builder, Construction Subcontractors, or Suppliers or any other individual for whom Design-Builder is responsible; or
  2. Normal wear and tear under normal usage.

- C. None of the following will constitute an acceptance by Owner of Work that is not in accordance with the Contract Documents or a release of Design-Builder's obligation to perform the Work in accordance with the Contract Documents, unless expressly stated otherwise in writing:
1. Observations by Owner;
  2. The making of any progress or final payment;
  3. The issuance of a certificate of Substantial Completion;
  4. Use or occupancy of the Work or any part thereof by Owner;
  5. Any review and approval of a Submittal;
  6. Any inspection, test, or approval by others; or
  7. Any correction of defective Construction by Owner.

7.19 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's Consultant, and their officers, directors, members, partners, employees, agents, consultants, and subcontractors, from losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, but only to the extent caused by any negligent act, intentional act, or omission of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
- B. In any and all claims or actions against Owner, Owner's Consultant, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, any individual or entity directly or indirectly employed or retained by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.19.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design-Builder, a Project Design Professional, or any Construction Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Design-Builder under Paragraph 7.19.A shall not extend to the liability of Owner's Consultant, other consultants or design professionals of Owner, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

## ARTICLE 8 – SUBMITTALS

### 8.01 *Design-Builder's Preparation of Submittals*

- A. Design Submittals shall be prepared by Project Design Professionals, on behalf of Design-Builder.
- B. The appropriate Project Design Professional shall review and approve each Submittal (including but not limited to all Design Submittals), other than those Submittals not involving technical or engineering matters, before Design-Builder's transmittal of such Submittal to Owner. Such review and approval shall account for the following, as appropriate:
  1. That any items covered by such Submittal will, after installation or incorporation in the Construction, comply with the information and requirements in the Contract Documents and the Construction Drawings and Construction Specifications, as duly modified, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified.
  2. That if the Submittal includes any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, or any proposed variation from the requirements of such documents, such proposed modification or variation is acceptable based on the standards of the engineering profession (or other applicable design profession), and if implemented will be supported by signing or sealing by a licensed design professional, as necessary.
- C. Before Design-Builder's transmittal of a Submittal to Owner, the Design-Builder shall, as applicable:
  1. Review and coordinate the Submittal with other Submittals and with the requirements of the Work, the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified;
  2. Determine and verify all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal, and confirm that the Submittal is complete with respect to all related data included in the Submittal;
  3. Determine and verify the suitability of proposed materials and equipment with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation; and
  4. Determine and verify all information relative to Design-Builder's responsibilities for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.
- D. Design-Builder shall give Owner specific written notice of any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, and any variations that a Submittal may have from the requirements of the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified. This notice shall be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Submittal in drawing form, by a specific notation made on the drawing itself.

- E. Each Submittal shall bear a stamp or specific written certification by Design-Builder that it has satisfied its obligations under the Contract Documents with respect to preparation of the Submittal, and that Design-Builder approves the Submittal.
- F. All Submittals must be acceptable based on compliance with form and content requirements of the Contract Documents. Design-Builder shall submit Design Submittals for Owner's review and approval. Other Submittals shall not require express approval, except as indicated in the Supplementary Conditions or elsewhere in the Contract Documents.

#### 8.02 *Owner's Review of Submittals*

- A. Owner will review all Submittals, and may comment on any Submittal. Any response to a Submittal by Owner shall be in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.07, and the provisions of the Contract Documents.
- B. For those Submittals requiring Owner's review and approval, Owner's response will be in writing and will indicate either that Owner approves the Submittal or rejects the Submittal. Owner may also include comments regarding the approved or rejected Submittal. For those Submittals that do not require approval, the Submittal shall be deemed acceptable to Owner unless Owner responds with a timely objection or adverse comment.
- C. Unless a specific provision of the Contract Documents expressly provides otherwise, Owner's review of a Submittal will be to determine if the Submittal complies with and is consistent with the Contract Documents. If Owner concludes that a Submittal requiring approval complies with and is consistent with the Contract Documents, the Owner shall approve such Submittal.
- D. Owner's approval, rejection, or acceptance of a Submittal will not extend to the means, methods, techniques, sequences, or procedures of Construction, or to safety precautions or programs incident thereto.
- E. Owner's review, comments, approval, rejection, or acceptance of Submittals shall not relieve Design-Builder from responsibility for (1) performance of the Work in accordance with the Contract Documents, (2) the scheduling and progress of the Work, (3) the means, methods, sequences, techniques, and procedures of Construction, and safety precautions and programs incident thereto, or (4) any variation from the requirements of the Contract Documents, unless Design-Builder has in a separate written communication at the time of submission called Owner's attention to each such variation, and Owner has given written approval of each such variation; nor shall Owner's review, comments, approval, rejection, or acceptance of a Submittal impose any such responsibility on Owner.
- F. Construction tasks and expenditures by Design-Builder prior to Owner's review and approval or acceptance of any Submittal will be at the sole risk of Design-Builder.
- G. In reviewing, approving, rejecting, accepting, or commenting on any Design Submittal, Owner does not assume responsibility for the design, for any deficiencies in the Design Submittal or in the Design Professional Services by which they were prepared, or for constructability, cost, or schedule problems that may arise in connection with the Design Submittal.
- H. The parties acknowledge that Design-Builder's design responsibilities continue after commencement of Construction. During the course of Construction, the Design-Builder may propose modifications to the Construction Drawings and Construction Specifications. Owner shall approve such proposed modifications if (1) they comply with and are consistent with the



Contract Documents, (2) Design-Builder has demonstrated that the modification is minor in character, or will not be detrimental to the quality and function of the Work, (3) the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters, and (4) Owner has not relied on the previously-approved Construction Drawings and Construction Specifications, such that the proposed modification would be detrimental to the Owner's interests. At its option, Owner may also approve more substantial or divergent proposed modifications, provided that the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters.

## **ARTICLE 9 – OTHER CONSTRUCTION**

### **9.01 *Other Work***

- A. In addition to and apart from the Work to be performed and furnished by Design-Builder under the Contract Documents, the Owner may perform other construction work at or adjacent to the Site during the course of the Project. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Design-Builder written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work at or adjacent to the Site, Owner shall provide such information to Design-Builder.
- C. Design-Builder shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and to Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Design-Builder shall do all cutting, fitting, and patching of the Construction that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Design-Builder shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Builder may cut or alter others' work with the written consent of Owner and the others whose work will be affected.
- D. If the proper execution or results of any part of the Construction depends upon work performed by others under this Article 9, Design-Builder shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of the Construction. Design-Builder's failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Construction, except for latent defects and deficiencies in such other work.

### **9.02 *Coordination***

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be

set forth in the Supplementary Conditions or provided to Design-Builder prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  2. An itemization of the specific matters to be covered by such authority and responsibility; and
  3. The extent of such authority and responsibilities.
- B. If the Supplementary Conditions do not identify the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors, Owner shall have sole authority and responsibility for such coordination.

### 9.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Construction or to the property of Design-Builder or the Construction Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Construction, through actions or inaction, then Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Design-Builder in the Contract Documents, and any provisions in Laws or Regulations concerning utility action or inaction, or related remedies. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Design-Builder assigning to Owner all Design-Builder's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.
- B. Design-Builder shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Design-Builder fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Design-Builder, and assign to such other contractor or utility owner the Owner's contractual rights against Design-Builder with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Design-Builder shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Design-Builder's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Design-Builder.
- D. If Design-Builder damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Design-Builder's failure to take reasonable and customary measures to avoid such impacts, or

if any claim arising out of Design-Builder's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Design-Builder or Owner, then Design-Builder shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and its officers, directors, members, partners, employees, agents, consultants and subcontractors from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 10 – OWNER'S RESPONSIBILITIES**

### **10.01 General**

- A. Owner shall do the following in a timely manner so as not to delay the services of Design-Builder:
1. If requested in writing by Design-Builder, furnish reasonable evidence satisfactory to Design-Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design-Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days' notice to the Owner;
  2. Make payments to Design-Builder promptly when they are due, as provided in Paragraph 14.01 and 14.06;
  3. Furnish the Site as set forth in Paragraph 5.01; arrange for safe access to and make all provisions for Design-Builder to enter upon public and private property as may reasonably be required for Design-Builder to perform Work under the Contract.
  4. Furnish to Design-Builder, as required for performance of the Work, the following, all of which Design-Builder may use and rely upon in performing services under this Agreement:
    - a. Site Environmental Assessment study;
    - b. Property, boundary, easement, right-of-way, and other special engineering surveys or data;
    - c. Property descriptions;
    - d. Zoning, deed, and other land use restrictions;
    - e. Utility and topographic mapping and surveys;
    - f. Site geotechnical report;
    - g. Any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site;
    - h. Engineering surveys to establish reference points which in Owner's judgment are necessary to enable Design-Builder to proceed with the Work;
    - i. Assistance to Design-Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project; and

- j. Permits, licenses, and approvals of government authorities that the Contract Documents expressly require Owner to obtain.
- 5. Provide information known to Owner relating to the presence of materials and substances at the Site that could create a Hazardous Environmental Condition.
- B. If an obligation ascribed to Owner in Paragraph 10.01.A is expressly assigned to Design-Builder, in the description of the Work or elsewhere in the Contract Documents, then such express assignment to Design-Builder shall supersede the provision in Paragraph 10.01.A.
- C. Recognizing and acknowledging that Design-Builder's services and expertise do not include the following services, Owner shall furnish or obtain, as required for the Project:
  - a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  - b. Legal services with regard to issues pertaining to the Project as Owner requires, or Design-Builder reasonably requests.
  - c. Such auditing services as Owner requires to review cost submittals or ascertain how or for what purpose Design-Builder has used the money paid.
- D. Examine all studies, reports, alternate solutions, sketches, drawings, specifications, proposals, Submittals (including Design Submittals), and other documents presented by Design-Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination), and if a decision is required with respect to any such document, render such decision in writing pursuant to any specific schedule, or if no specific schedule pertains, within a reasonable time after receipt of the document.

#### 10.02 *Insurance*

- A. Owner's responsibilities with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

#### 10.03 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design-Builder's failure to perform the Work in accordance with the Contract Documents.

#### 10.04 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility with respect to undisclosed Hazardous Environmental Conditions uncovered or revealed at the Site is set forth in Paragraph 5.06.

10.05 *Owner's Site Representative*

- A. Owner may furnish an Owner's Site Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Owner's Site Representative and assistants will be as provided in the Supplementary Conditions.

10.06 *Owner's Consultants and Managers*

- A. Owner's Consultant, if any, is identified in the Agreement.
- B. Owner shall advise Design-Builder of the identity and scope of services of any other independent consultants or managers retained by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, constructability review, program management, project management, or contract administration.
- C. Neither Owner's Consultant, Owner's Site Representative, nor any other consultant or manager retained by Owner, has any duties, responsibilities, or authorities with respect to Design-Builder, unless expressly provided in this Contract. Owner's Consultant and such other consultants and managers shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work; and will not be responsible for Design-Builder's failure to perform the Work in accordance with the Contract Documents.

10.07 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Design-Builder's safety programs of which Owner has been informed pursuant to Paragraph 7.13.D.
- B. Owner shall inform Design-Builder of any specific requirements of safety or security programs that are applicable to Design-Builder while at the Site.

10.08 *Permits and Approvals*

- A. Owner shall obtain reviews, approvals, certificates, and permits from governmental authorities having jurisdiction over the Project as indicated in the Contract Documents.

**ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order or a Work Change Directive.
  - 1. *Change Orders:* If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
  - 2. *Work Change Directives:* The Work modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order. When a Work Change Directive is issued, the parties will promptly meet to attempt to negotiate

the Work Change Directive's effect, if any, on the Contract Times and Contract Price. The effect, if any, on Contract Times and Contract Price, together with the Work Change Directive's addition, deletion, or revision to the Work, will be set forth in a subsequently issued Change Order.

- B. Either Owner or Design-Builder may propose or request a Change Order. With respect to certain events, this Contract may indicate specific times in which such requests or proposals must be submitted to the other party. With respect to all other events, the request or proposal shall be submitted to the other party within 30 days of the event giving rise to the request or proposal.

#### 11.02 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, and notwithstanding any other provision of the Contract, Owner may, at any time or from time to time, order or authorize additions, deletions, or revisions in the Work within the general scope of the Contract. Such changes may be accomplished by a Change Order, if Owner and Design-Builder have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Design-Builder shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Design-Builder to undertake work that Design-Builder reasonably concludes cannot be performed in a manner consistent with Design-Builder's safety or professional obligations under the Contract Documents or Laws and Regulations.

#### 11.03 *Unauthorized Changes in the Work*

- A. Design-Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents, as duly amended, except in the case of an emergency as provided in Paragraph 7.16, or in the case of uncovering Construction as provided in Paragraph 13.03.A.3.

#### 11.04 *Changes Involving the Design*

- A. To the extent a change, whether proposed by Design-Builder or Owner, ordered by Owner, or set forth in a proposed Change Order or in a Work Change Directive, involves the design (as set forth in the Construction Drawings, Construction Specifications, or otherwise) or other engineering or technical matters, such changes must be reviewed and approved by the applicable Project Design Professional. The review and approval may occur at the time the change occurs, or as part of Design-Builder's provision of Professional Design Services in response to the change.

#### 11.05 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim regarding an adjustment in the Contract Price shall be presented by written notice to the other party in accordance with Paragraph 16.01.
- B. If the Contract Price is based on Cost of the Work, then the provisions in the Agreement regarding Cost of the Work and changes in the Design-Builder's fee, Contract Price, Guaranteed Maximum Price, and Guaranteed Maximum Fee, apply.

- C. The value of any Work covered by a Change Order or of any adjustment in the Contract Price will be determined as follows:
1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.02); or
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.05.D); or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents, and agreement to a lump sum is not reached under Paragraph 11.05.C.2, then on the basis of the Cost of the Work for price adjustments (determined as provided in the Cost of the Work provisions in the Agreement, if applicable, or in Paragraph 12.01), plus a Design-Builder's Fee for overhead and profit (determined as provided in Paragraph 11.05.D).
- D. *Design-Builder's Fee:* The Design-Builder's fee for overhead and profit on Change Orders shall be determined as follows:
1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 12.01.B.1.a. and 12.01.B.2, the Design-Builder's fee shall be 15 percent;
    - b. For costs incurred under Paragraph 12.01.B.3, 12.01.B.4, 12.01.B.5, and 12.01.B.6, the Design-Builder's fee shall be 5 percent;
    - c. With respect to Construction Subcontracts, where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of this Contract is that the Design-Builder's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraph 12.01 by the subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Design-Builder itself, and to any Construction Subcontractors of a tier higher than that of the Construction Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Construction Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Construction Subcontractor that actually performs the Work;
    - d. With respect to Design Agreements, the Engineer or other invoicing Project Design Professional under a Design Agreement may add a fee of 5 percent to an invoice from a lower tier design entity, and Design-Builder may add a fee of 5 percent to an invoice from Engineer or other invoicing Project Design Professional; Owner shall not be responsible for any other mark-up at any tier (other than those incorporated in a factor, multiplier, hourly rate, or stipulated sum from the entity performing the subject Design Professional Services);

- e. No fee will be payable on the basis of costs itemized in Paragraph 12.01.B.7 or 12.01.C;
- f. The amount of credit to be allowed by Design-Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design-Builder's fee by an amount equal to 5 percent of such net decrease; and
- g. When both additions and credits are involved in any one change, the adjustment in Design-Builder's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.05.D.2.a through 11.05.D.2.e., inclusive.

#### 11.06 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim regarding an adjustment of the Contract Times shall be presented by written notice to the other party pursuant to Paragraph 16.01.
- B. Design-Builder's entitlement to an adjustment of the Contract Times under this Contract is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.

#### 11.07 *Execution of Change Orders*

- A. Owner and Design-Builder shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Design-Builder has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's correction of defective Work under Paragraph 13.05 or Owner's acceptance of defective Work under Paragraph 13.07, or (c) agreed to by the parties (all subject to the need for review and approval by the applicable Project Design Professional pursuant to Paragraph 11.04); and
  - 4. Changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Article 16.
- B. If Owner or Design-Builder refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

#### 11.08 *Notice to Sureties*

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design-Builder's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.



## ARTICLE 12 – COST OF THE WORK ADJUSTMENTS; UNIT PRICE WORK

### 12.01 *Cost of the Work*

- A. *Costs of the Work Adjustment:* When the price of Work covered by a Change Order or an adjustment in Contract Price is to be determined on the basis of Cost of the Work, the Cost of the Work adjustment means the sum of all costs necessarily incurred and paid by Design-Builder in the proper performance of the specific portion of the Work. The costs to be reimbursed to Design-Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the adjustment. If the Agreement contains Cost of the Work provisions, such provisions shall govern in determining the Cost of the Work for Change Order or adjustment purposes. If the Agreement does not contain Cost of the Work provisions, then the provisions in Paragraph 12.01 shall apply.
- B. *Costs Included:* The Cost of the Work adjustment does not include any of the costs itemized in Paragraph 12.01.C, and shall include only the following items with respect to the subject Work:
1. Payroll costs for employees in the direct employ of Design-Builder in the performance of the subject Work, under schedules of job classifications agreed upon by Owner and Design-Builder in advance of such performance.
    - a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the subject Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. The expenses of performing the subject Work outside the hours or days permitted by this Contract shall be included in the above to the extent such performance of Work is authorized by Owner.
    - b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services as employees of Design-Builder. For purposes of this Paragraph 12.01.B.1.b, Design-Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, as designated in the Agreement, for services in the performance of the subject Work.
  2. Cost of all materials and equipment furnished and incorporated in the subject Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design-Builder unless Owner deposits funds with Design-Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design-Builder shall make provisions so that they may be obtained.
  3. Cost of permits obtained by Design-Builder.
  4. Payments made by Design-Builder to Construction Subcontractors for subject Work performed or furnished by such Construction Subcontractors. If any subcontract provides that the Construction Subcontractor is to be paid on the basis of Cost of the Work plus a

fee, the Construction Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design-Builder's Cost of the Work and fee.

5. Payments made by Design-Builder for Design Professional Services provided or furnished with respect to the subject Work under a Design Agreement.
6. Costs of special consultants (not including Project Design Professionals), including but not limited to testing laboratories, attorneys, and accountants, retained for services specifically related to the subject Work.
7. Supplemental costs including the following items:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Design-Builder's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of Design-Builder.
  - c. Rentals of all construction or engineering equipment and machinery, and their parts, whether rented from Design-Builder or from others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal of such equipment, machinery, and parts. All such costs shall be in accordance with the terms of such rental agreements. The rental of any such equipment, machinery, or parts shall cease when its use is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the subject Work, and for which Design-Builder is liable, imposed by Laws or Regulations.
  - e. Deposits lost for causes other than negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses, damages, and related expenses caused by damage to the subject Work not compensated by insurance or otherwise, sustained by Design-Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Design-Builder's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site, as applicable to the subject Work.
  - h. Minor expenses such as long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.

- i. Cost of premiums for all Bonds and insurance Design-Builder is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
  1. Payroll costs and other compensation of Design-Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Design-Builder whether at the Site or in Design-Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1, all of which are to be considered administrative costs covered by the Design-Builder's fee.
  2. Expenses of Design-Builder's principal and branch offices other than Design-Builder's office at the Site.
  3. Any part of Design-Builder's capital expenses, including interest on Design-Builder's capital employed for the subject Work and charges against Design-Builder for delinquent payments.
  4. Costs due to the negligence of Design-Builder, any Construction Subcontractor, Engineer or other Project Design Professionals, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  5. Other overhead or general expense costs of any kind, and the costs of any item not specifically and expressly included in Paragraph 12.01.B.
- D. *Design-Builder's Fee:* When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design-Builder's fee shall be determined as set forth in Paragraph 11.05.D.
- E. *Documentation:* Whenever the cost of any Work is to be determined pursuant to Paragraph 12.01.B and 12.01.C, Design-Builder will establish and maintain cost records in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

## 12.02 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design-Builder will be made by Owner.
- B. If Design-Builder's compensation is based on Cost of the Work, this Contract will not include compensation under unit prices unless expressly stated otherwise.
- C. Each unit price will be deemed to include an amount considered by Design-Builder to be adequate to cover Design-Builder's overhead and profit for each separately identified item.

- D. Design-Builder or Owner may seek an adjustment in the Contract Price if:
1. The quantity of any item of Unit Price Work performed by Design-Builder differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
  2. Such an adjustment would not duplicate, and is coordinated with, any other related adjustments of Contract Price; and
  3. Design-Builder has incurred additional expense, or less expense, as a result of the variation in quantity.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION**

### **13.01 Access to Construction**

- A. Owner, Owner's Consultant, Owner's Site Representative, and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder's Site safety procedures and programs so that they may comply therewith as applicable.

### **13.02 Tests, Inspections, and Approvals**

- A. Design-Builder shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. By the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. By Laws and Regulations, unless the Contract Documents or Laws and Regulations expressly allocate responsibility for a specific inspection or test to Owner;
  3. To attain Owner's acceptance of materials or equipment to be incorporated in the Construction;
  4. By manufacturers of equipment furnished under the Contract Documents;
  5. To meet the requirements of the Construction Drawings and Construction Specifications;
  6. For testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Construction; and
  7. For acceptance of materials, mix designs, or equipment submitted for approval prior to Design-Builder's purchase thereof for incorporation in the Construction.
- B. Owner shall be responsible for arranging, obtaining, and paying for all inspections and tests expressly required by the Contract Documents or Laws and Regulations to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Construction shall be governed by the provisions of Paragraph 13.03.
- C. All inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Design-Builder.

- D. If the Contract Documents require the Construction (or part thereof) to be approved by Owner or another designated individual or entity, then Design-Builder shall assume full responsibility for arranging and obtaining such approvals.
- E. Design-Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, and approvals.
- F. Design-Builder shall give Owner timely notice of readiness of the Construction (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- G. Each party shall provide the other with copies of any certificates of inspection or approval obtained with respect to tests and inspections.
- H. Both parties may rely on the results of inspections and tests, performed pursuant to this paragraph and the governing provisions of the Contract Documents, Laws and Regulations, and the Construction Drawings and Construction Specifications.
- I. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design-Builder without written concurrence of Owner, then Contractor shall, if requested by Owner, uncover such Construction for observation. Such uncovering shall be at Design-Builder's expense unless Design-Builder has given Owner timely notice of Design-Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

#### 13.03 *Uncovering Construction*

- A. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, then Design-Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection, or testing, as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material, and equipment.
  - 1. If the Construction had been covered contrary to the written request of Owner or a requirement of the Contract Documents, then uncovering it for Owner's observation and re-covering it shall be at Design-Builder's expense, regardless of whether it is defective.
  - 2. If it is found that the covered Construction is defective, Design-Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement, re-covering, or reconstruction (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price.
  - 3. If the covered Construction is not found to be defective, Design-Builder shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, re-covering, and reconstruction, subject to the provisions of Paragraph 13.03.A.1.

#### 13.04 *Defective Construction*

- A. It is Design-Builder's obligation to assure that the Construction is not defective.

- B. Owner shall give Design-Builder prompt written notice of all defective Construction of which Owner has actual knowledge. Owner may reject, accept, or correct defective Construction.
- C. Promptly after receipt of written notice of defective Construction, unless Owner expressly indicates that it will accept the defective Construction, Design-Builder shall correct all such defective Construction, whether or not fabricated, installed, or completed; or, if Owner has rejected the defective Construction, remove it from the Project and replace it with Construction that is not defective.
- D. When correcting defective Construction, Design-Builder shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Construction.

13.05 *Owner May Correct Defective Construction*

- A. If Design-Builder fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction, or if Design-Builder fails to perform the Construction in accordance with the Contract Documents, or if Design-Builder fails to comply with any other provision of the Contract Documents, Owner may, after 7 days' written notice to Design-Builder, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.05 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design-Builder from all or part of the Site, take possession of all or part of the Construction, and suspend Design-Builder's services related thereto, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere. Design-Builder shall allow Owner, Owner's Consultant, Owner's Site Representative, and Owner's other representatives, agents, employees, and contractors, access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

13.06 *Costs*

- A. Design-Builder shall bear all costs arising out of or relating to the correction, removal, or replacement of defective Construction, including but not limited to repair of adjacent Work or property; delay costs and impacts; fees and charges of engineers, architects, attorneys, and other professionals; and all court, arbitration, or other dispute resolution costs.
- B. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising its rights and remedies arising from defective Construction under this Article will be charged against Design-Builder, by set-off against payment or otherwise.
- C. Design-Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to defective Construction.

13.07 *Owner's Acceptance of Defective Construction*

- A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. If such acceptance is proposed prior to final payment, it shall be subject to confirmation by the applicable Project Design Professional that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety. Design-Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys

and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted.

#### 13.08 *Owner May Stop Construction*

- A. If Construction is defective, or Design-Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design-Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design-Builder or any other party.

### **ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION**

Payment is governed by the Local Government Prompt Payment Act, including but not limited to s. 218.735, Florida Statutes, except when in conflict with any grant funding requirements, then said grant funding requirements will control.

#### 14.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.04 will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.
- B. *Application for Progress Payment:* On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design-Builder shall submit to Owner for review an Application for Payment filled out and signed by Design-Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.
- C. *Payment of Obligations:*
  - 1. Beginning with the second Application for Payment, each Application shall include an affidavit of Design-Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design-Builder's legitimate obligations associated with prior Applications for Payment.
  - 2. If Design-Builder contends that it has withheld payment of underlying obligations for good cause, then Design-Builder shall inform Owner of the identity of the entity from which Design-Builder has withheld payment, the amount of the withholding, and the reason for the withholding.

- D. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. Retainage is 5% of each progress payment.
- E. *Review of Applications:*
1. Each Application for Payment must be submitted for approval by Design-Builder to the Owner's Consultant [insert address or e-mail address]. Upon receipt the Owner's Consultant will stamp the Application for Payment as received noting the date on which it is received. The date stamp will commence the time periods for payment or rejection of a payment request. Payment is due 25 business days after the date on which the Application for Payment is stamped as received. Owner's Consultant will, within 20 days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design-Builder indicating in writing its reasons for refusing to accept the Application and the action necessary to make the payment request proper.
- F. Not more than 10 business days after the date a corrected Application for Payment that corrects the deficiency is received, payment must be made by Owner to Design-Builder, or the corrected Application for Payment must be rejected.
- G. 25 business days after accepting such Application the amount will become due and when due will be paid by Owner to Design-Builder.
1. If Owner should fail to pay Design-Builder at the time the payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written overdue notice. If the Application for Payment is not rejected within 4 business days after deliver of the overdue notice, the Application for Payment shall be deemed accepted, except for any portion that is fraudulent or misleading.
  2. Payments due but unpaid shall bear interest at the rate of 2 percent per month.
  3. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.
  4. Within 10 days after the Design-Builder received payment from the Owner, Design-Builder must remit payment to those subcontractors and suppliers hired by Design-Builder. Within 7 days after the subcontractor's receipt of payment, the subcontractor must remit payment to subcontractors and suppliers hired by the subcontractor.
- H. *Reduction in or Refusal to Make Payment:*
1. Any dispute not resolved as provided in F. will be resolved as provided herein. Owner may impose a set-off against the whole or any part of any such payment, or nullify any previous payment because of subsequently discovered evidence or the results of subsequent inspections or tests, to the extent that is reasonably necessary to protect Owner from loss because:
    - a. Claims have been made against Owner on account of Design-Builder's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Design-Builder's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from breach of warranty, workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;



- b. Design-Builder has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Design-Builder has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Design-Builder is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Construction is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Construction in accordance with Paragraph 13.05, or has accepted defective Construction pursuant to Paragraph 13.07;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event that would constitute a default by Design-Builder and therefore justify a termination for cause has occurred;
  - j. Liquidated damages, special damages, or performance damages have accrued under the Contract Documents as a result of Design-Builder's failure to achieve Milestones, Substantial Completion, final completion of the Work, or performance requirements, as applicable;
  - k. Liens have been filed in connection with the Work, except where Design-Builder has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens; or
  - l. There are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, Owner will give Design-Builder immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Design-Builder any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Design-Builder the amount so withheld, or any adjustment thereto agreed to by Owner and Design-Builder, if Design-Builder remedies the reasons for such action. The reduction imposed shall be binding on Design-Builder unless it duly presents a written notice of Claim contesting the reduction.

#### 14.02 *Design-Builder's Warranty of Title*

- A. Design-Builder warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether already incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### 14.03 *Substantial Completion*

- A. When Design-Builder considers the Work ready for its intended use Design-Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design-Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design-Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work

substantially complete, Owner and Design-Builder will develop a single list of items and the estimated cost to complete each item on the list to render complete, satisfactory, and acceptable construction services. Within 5 days after Owner and Design-Builder inspect the Work, Owner will develop the initial list of items and provide a copy to the Design-Builder. The Design-Builder has 5 business days to review the list of items and add the estimated cost to complete, then deliver to the Owner. If Design-Builder disputes any items on the Owner's list, and/or Owner disputes any estimated cost included by Design-Builder, then the parties must meet within 5 business days from the dispute to resolve. The list must be agreed upon no later than 30 calendar days from Design-Builder's notice to Owner that the Work is substantially complete.

- B. If Owner considers the Work substantially complete:
  - 1. Owner and Design-Builder will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Design-Builder agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
  - 2. Owner will prepare and deliver to Design-Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. Owner shall attach to the certificate a punch list of items to be completed or corrected before final payment.
- C. After Substantial Completion the Design-Builder shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Design-Builder may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- D. Owner shall have the right to exclude Design-Builder from the Site after the date of Substantial Completion subject to allowing Design-Builder reasonable access to remove its property and complete or correct items on the punch list.

#### 14.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (1) has specifically been identified in the Contract Documents, or (2) Owner and Design-Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design-Builder's performance of the remainder of the Construction, subject to the following:
  - 1. Owner at any time may request Design-Builder in writing to permit Owner to use or occupy any such part of the Construction that Owner believes to be ready for its intended use and substantially complete. If Design-Builder agrees that such part of the Work is substantially complete, Design-Builder and Owner will follow the procedures of Paragraph 14.03 for that part of the Construction.
  - 2. Design-Builder at any time may notify Owner in writing that Design-Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner and Design-Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 14.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 6.05 regarding property insurance.

#### 14.05 *Final Inspection*

- A. Final completion of the Work is 20 calendar days after Owner's delivery of the list of items provided after inspection for Substantial Completion. Upon written notice from Design-Builder that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Design-Builder and will notify Design-Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies. Within 20 business days after the list of items provided after inspection for Substantial Completion, the Design-Builder is due payment of the remaining contract balance that includes all retainage previously withheld less an amount equal to 150 percent of the estimated cost to complete the items on the list.

#### 14.06 *Final Payment*

##### A. *Application for Payment:*

1. Upon completion of all items on the list, Design-Builder may submit an Application for Payment for the amount withheld to complete the items on the list. If a good-faith dispute exists as to whether one or more items identified on the list have been completed, the Owner may continue to hold up to 150 percent of the total costs to complete such items. After Design-Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, and Record Documents, Design-Builder may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (unless previously delivered) by:
  - a. All documentation called for in the Contract Documents;
  - b. Consent of the surety, if any, to final payment;
  - c. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment;
  - d. A list of all disputes that Design-Builder believes are unsettled; and
  - e. Complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of such releases or waivers of Liens specified in Paragraph 14.06.A.2, and as approved by Owner, Design-Builder may furnish receipts or releases in full and an affidavit

of Design-Builder that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed, and (b) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Project Design Professional, Construction Subcontractor, or Supplier fails to furnish such a release or receipt in full, Design-Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

- B. *Final Payment and Acceptance:* If Owner is satisfied that the Work has been completed and Design-Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within 10 days after receipt of the final Application for Payment, give written notice to Design-Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design-Builder, indicating in writing the reasons for refusing to process final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Application.
- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment.
- D. *Payment Becomes Due:* The amount will become due and will be paid by Owner to Design-Builder 20 business days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability.

#### 14.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Design-Builder. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.05, from Design-Builder's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from unresolved disputes or Claims presented by Owner, or from Design-Builder's continuing obligations under the Contract.
- B. The acceptance of final payment by Design-Builder will constitute a waiver by Design-Builder of all claims and rights against Owner other than those pending matters that have been duly submitted to dispute resolution under the provisions of Article 16.

#### 14.08 *Correction Period*

- A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design-Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (1) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (2) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design-Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other

professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design-Builder.

- B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.
- C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, or removed or replaced, under this Paragraph 14.08, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

## **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

### **15.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Design-Builder, which will fix the date on which Work will be resumed. Design-Builder shall resume the Work on the date so fixed. Design-Builder shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

### **15.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events justifies termination for cause:
  - 1. Design-Builder's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the progress schedule as duly adjusted).
  - 2. Design-Builder's disregard of Laws or Regulations of any public body having jurisdiction.
  - 3. Design-Builder's violation in any substantial way of provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, Owner may, after giving Design-Builder (and the surety, if any) 7 days' written notice, terminate the services of Design-Builder, take possession of any completed Design Submittals prepared by or for Design-Builder (subject to the limited license and indemnification provisions of Paragraph 3.04), exclude Design-Builder from the Site, take possession of the Work, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design-Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to Design-Builder. If such costs, losses and damages exceed such unpaid balance, Design-Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.
- C. Notwithstanding Paragraph 15.02.B, Design-Builder's services will not be terminated if Design-Builder begins, within 7 days of receipt of notice of intent to terminate, to correct its

failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

- D. Where Design-Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design-Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design-Builder by Owner will not release Design-Builder from liability.

#### 15.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Design-Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design-Builder shall be paid (without duplication of any items) for:
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  - 3. Amounts paid in settlement of terminated contracts with Project Design Professionals, Construction Subcontractors, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with such terminated contracts); and
  - 4. Reasonable expenses directly attributable to termination.
- B. Design-Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 *Design-Builder May Stop Work or Terminate*

- A. If, through no act or fault of Design-Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, Owner fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay Design-Builder any sum finally determined to be due, then Design-Builder may, upon 7 days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.A. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design-Builder any sum finally determined to be due, Design-Builder may upon 7 days' written notice to Owner stop the Work until payment is made of all such amounts due Design-Builder, including interest thereon. The provisions of this paragraph are not intended to preclude Design-Builder from obtaining an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design-Builder's stopping Work as permitted by this paragraph.

## ARTICLE 16 – DISPUTES

### 16.01 *Methods and Procedures*

- A. *Notice of Claim:* If Owner and Design-Builder are not in agreement regarding a proposed or requested Change Order, other proposed adjustment of Contract Price or Contract Times, a Work Change Directive issued by Owner, or any other relief proposed or requested under the Contract, then either party may provide written notice of a Claim to the other party. Such notice of Claim shall be given within 90 days of: the proposal or request for a Change Order; such other proposed adjustment of Contract Price or Contract Times; the issuance of the Work Change Directive; or the proposal or request for other relief under the Contract. The notice of Claim shall be given within the 90 days regardless of whether the other party has responded to such proposal, request, or issuance, and regardless of whether discussions or negotiations are in progress; provided, however, that the parties may extend the time to give such notice of Claim by mutual written agreement. The notice of Claim shall include a statement of position, specification of the remedy sought, and supporting documentation.
- B. *Response:* Within 30 days of the date of notice of Claim, the receiving party shall respond with a written statement of position and any supporting documentation.
- C. *Direct Negotiations:* Owner and Design-Builder agree to directly negotiate all Claims between them in good faith for a period of 60 days from the date of notice of Claim.
- D. *Mediation:* If direct negotiations are unsuccessful in resolving a Claim, then Owner and Design-Builder shall submit the unsettled Claim to mediation by a mutually agreeable mediator or mediation service. Owner and Design-Builder agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days.
  - 1. The fees and expenses, including filing fees, of the mediator and any mediation service shall be shared equally by Owner and Design-Builder.
  - 2. The mediation shall be held in the locality where the Project is located, unless another location is mutually agreed upon by the parties.
  - 3. A settlement (if any) resulting from such mediation will be specifically enforceable under the prevailing law, by any court having jurisdiction.
  - 4. Participation in the mediation process in good faith is a condition precedent to commencing final or binding dispute resolution.
- E. If mediation is unsuccessful in resolving a Claim, then within 120 days of the completion of the mediation (1) the parties may mutually agree to a binding dispute resolution process of their choice, or (2) the claimant may give notice to the other that the claimant will seek to have the dispute resolved by a binding dispute resolution method established in this Contract, or if no such method has been established, by a court of competent jurisdiction. Failure by claimant to give such notice in a timely manner shall result in a waiver of the Claim.

## ARTICLE 17 – MISCELLANEOUS

### 17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice to the other party to this Contract, it will be deemed to have been validly given if delivered to the Authorized Representative of the other party:

1. In person, by a commercial courier service or otherwise; or
2. By registered or certified mail, postage prepaid; or
3. By e-mail, with the words "Formal Notice" or similar in the e-mail's subject line.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. Unless expressly stated otherwise in this Contract, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, or waiver of, any rights and remedies available to any or all of them which are otherwise imposed or available by:
1. Laws or Regulations; or
  2. Any special warranty or guarantee; or
  3. Other provisions of the Contract.
- B. The provisions of Paragraph 17.03.A will be as effective as if repeated specifically in the Contract in connection with each particular duty, obligation, right and remedy to which they apply.

17.04 *Limitation of Damages*

- A. With respect to this Contract and any and all Claims and other matters at issue, Owner shall not be liable to Design-Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Builder on or in connection with any other project or anticipated project.

17.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

17.07 *Controlling Law*

- A. The Contract Documents will be construed in accordance with the law of the place of the Project.



17.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

DRAFT

This page intentionally left blank

DRAFT

## SUPPLEMENTARY CONDITIONS

*These Supplementary Conditions amend or supplement the Standard General Conditions of the Contract Between Owner and Design-Builder, EJCDC® D-700 (2016 Edition). All provisions that are not so amended or supplemented remain in full force and effect unless amended or supplemented in another Section. The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, if any, which are applicable to both the singular and plural thereof. The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.*

*This Section may include certain provisions required by Laws and Regulations but does not represent or reflect all applicable provisions and policies or Laws and Regulations, and may only include excerpts and portions thereof. Other required provisions and policies, and Laws and Regulations, shall be deemed to be so included and incorporated herein. Contractor is solely responsible to determine, obtain and review and interpret the full text of applicable provisions and policies, Regulations, and Laws.*

### SC-1.01 Defined Terms

Add the following immediately after subparagraph 1.01.A.48.

#### F. Additional Terms

1. *Final Completion*—The time at which all Work is completed and ready for final payment in accordance with Paragraph 14.06 of these General Conditions.
2. *Industry Practice*—The written practices, methods, materials, supplies and equipment, as changed from time to time, that are commonly used in the industry applicable to the Project to design, construct and operate facilities and plants, or any practices, methods and acts, which in the exercise of reasonable judgment in light of the facts known at the time, could have been expected to accomplish the desired results consistent with good business practices, reliability, safety and expedition.
3. *Notice of Intent to Award* – The written notice by Owner to the apparent Successful Proposer stating that upon compliance by the apparent Successful Proposer with the conditions enumerated therein, including presentation of executed performance and payment bonds and insurance documentation within the time specified, Owner may issue the Notice of Award.
4. *Punch List* -- a list of open items representing portions of the Work which Design-Builder and Owner reasonably agree is not complete on the date of Substantial Completion or Final Completion, but which items will not significantly interfere with the safe, reliable operation and integrity of the Project or its intended use.
5. *Purchase Order* -- A written agreement between Design-Builder and a Supplier for provision of material and equipment.

6. Correction Period—the correction period after the date of Substantial Completion per Paragraph 14.08 of the General Conditions.

*SC-2.01 Delivery of Bonds and Evidence of Insurance*

Delete Paragraphs 2.01.A and B in their entirety and insert the following in their place.

- A. *Bonds*: The apparent Successful Proposer shall, within 15 days after the receipt of the Notice of Intent to Award, furnish the Owner with a Performance Bond and a Payment Bond in penal sums equal to the amount of the Contract Price, meeting the requirements of Article 6.
- B. *Evidence of Design-Builder's Insurance*: The apparent Successful Proposer shall, within 15 days after the receipt of the Notice of Intent to Award, deliver to the Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions), the certificates and other evidence of insurance, meeting the requirements of Article 6.

*SC-2.02 Copies of Documents*

Delete Paragraph 2.02.A in its entirety and insert the following in its place:

- A. Owner shall furnish to Design-Builder 1 copy of conformed Contract Documents incorporating and integrating the content of all Addenda, the Proposal, the Proposal Amendment, and any other amendments negotiated prior to the Effective Date of the Contract (including one fully executed counterpart of the Agreement), and one electronic copy of the Contract Documents in portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at Owner's cost of reproduction.

*SC 5.06 Hazardous Environmental Conditions at Site*

Delete Paragraph 5.06.A in its entirety and insert the following in its place.

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

*SC-6.05. Property Insurance*

Add the following new subparagraph after Paragraph 6.05.A.1.

- a. In addition to Owner, Design-Builder, and all Construction Subcontractors, include as insureds the following:
  1. Woodard & Curran, Inc.

*SC 7.01. Design Professional Services*

Add the following at the end of Paragraph 7.01.B.

If the Contract establishes objective performance standards with which Design-Builder must comply, and if such performance standards have been clearly identified in the

Contract Documents using the term “performance standards” or “performance requirements”, then Design-Builder shall perform or furnish Design Professional Services that allow the Work to meet such performance standards and requirements, notwithstanding the professional standard of care set forth in the preceding sentence.

*SC-7.04. Labor; Working Hours*

Delete Paragraph 7.04.B in its entirety and insert the following in its place.

- B. Comply with the requirements of STATE LAW.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, and in the absence of any Laws or Regulations to the contrary, all Construction at the Site shall be performed during regular working hours. Design-Builder will not perform Work on any legal holiday. Design-Builder may perform Construction at the Site outside regular working hours or on a legal holiday only with Owner’s written consent, which will not be unreasonably withheld.
  - 1. Regular working hours will be between 7:00 AM to 5:00 PM Monday through Friday.
  - 2. Legal holidays applicable to this Contract are
    - New Year’s Day, January 1<sup>st</sup>
    - Memorial Day
    - Independence Day, July 4<sup>th</sup>
    - Labor Day
    - Thanksgiving Day and Friday after Thanksgiving Day
    - Christmas Day, December 25<sup>th</sup>

*SC-7.07 Concerning Project Design Professionals, Construction Subcontractors, Suppliers, and Others*

Add the following new subparagraph immediately following Paragraph 7.07.A.

- 1. Pursuant to STATE LAW , Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to pay any amounts due any of its subcontractors, whether for labor performed or materials furnished, within thirty days after such Subcontractor receives a payment from the Contractor which encompasses labor or materials furnished by such Subcontractor.

*SC-7.10 Taxes*

Add a new Paragraphs immediately after Paragraph 7.10.A.

- A. Owner is exempt from payment of sales and compensating use taxes of the State of Florida and of cities and counties thereof on all materials to be incorporated into the Construction. Owner is exempt from Florida sales and use tax by the Owner because it meets the criteria established in s.212.08(6), F.S. and has obtained an exemption

certificate from the Department of Revenue. Payment must be made directly to the dealer. The exemption does not include sales of tangible personal property made to contractors employed directly or as agents of the Owner when such tangible personal property goes into or becomes a part of public works owned by the Owner.

*SC-7.11 Laws and Regulations*

Add the following new Paragraphs immediately following Paragraph 7.11.C.

- B. The Project is specifically subject to the provisions of the STATE LAW and municipal codes and ordinances.

*SC-8.01 Design-Builder's Preparation of Submittals*

Add the following immediately after Paragraph 8.01.F.

G. *Required Submittals*

- 1. Furnish for Owner's review the following Construction-phase administrative Submittals, which shall be acceptable as to form and content:

Submittal	Remarks
Progress schedule – preliminary, initial, and monthly updates	
Schedule of Values – preliminary and initial, and update for each change in the Contract Price	
Schedule of Submittals – preliminary, initial, and monthly updates	
Copies of construction permits and licenses required by authorities having jurisdiction	Includes evidence that required inspections are successfully completed
Requests for interpretation or clarification of the Contract Documents	
Operation and maintenance data for materials and equipment incorporated into the Construction	
Record Drawings and Record Specifications	
Warranties	
Record Drawings	

- 2. Furnish for Owner's review the submittals required by the Conceptual Documents.

*SC-14.01. Progress Payments*

In the first sentence of Paragraph 14.01.F, delete the number "10" and replace with "45".

Add the following new subparagraphs immediately after Paragraph B.

- 1. Include a statement showing the status of all pending construction change orders, other pending change directives and approved changes to the Contract or any

subcontract. Such statement shall identify the pending construction change orders and other pending change directives, and shall include the date such change orders and directives were initiated, the costs associated with their performance and a description of any Work completed. As used in this section, "pending construction change order" or "other pending change directive" means an authorized directive for extra Work that has been issued to a contractor or a subcontractor.

Add the following new subparagraph immediately after subparagraph 14.01.C.1.

- a. Contractor shall pay Subcontractors within 30 days of receipt of payment from Owner. This provision shall be included in any subcontract in connection with Work under the Contract Documents.

Add the following new subparagraphs immediately after subparagraph 14.01.G.1.I.

- m. Failure to comply with Laws and Regulations.

#### SC-14.06. *Final Payment*

In the first sentence of Paragraph 14.06.D, delete the number "30" and replace with "45" and add the following new subparagraph.

1. Contractor shall pay Subcontractors within 30 days of receipt of payment from Owner. This provision shall be included in any subcontract in connection with Work under the Contract Documents.

#### SC-16 *Disputes*

Add the following new Paragraph immediately following Paragraph 16.01.E.

##### 16.02 *Attorneys' Fees*

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

#### SC-17.07 *Controlling Law*

Add the following new subparagraphs immediately after Paragraph 17.07.A.

1. This Contract is subject to all Laws and Regulations of the United States of America (including the U.S. Code of Federal Regulations), the Florida General Statutes and other public authorities, and all amendments thereto. Where any requirements contained herein do not conform to or are inconsistent with such Laws and Regulations to which the Contract is subject or by which it is governed, such Laws and Regulations shall have precedence over any matters set forth herein.

2. Statutes, Regulations, and portions and summaries thereof which are set forth or referred to in the Contract Documents shall be construed to include all amendments thereto in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids). The Owner and Engineer make no representation as to and assume no responsibility for the correctness or completeness of such statutory matters referred to or set forth herein.
3. Any provision in violation of the foregoing shall be deemed null, void and of no effect. Where conflicts with Laws and Regulations exist, the more stringent requirement shall apply.

**END OF SECTION**

**DRAFT**



**HUMAN TRAFFICKING AFFIDAVIT - S.787.06, FLORIDA STATUTES**

Before me, the undersigned authority, personally appeared \_\_\_\_\_, whom after being duly sworn, deposes and states:  
(Affiant)

1. My name is \_\_\_\_\_ and I am over eighteen years of age. The following information is given from my own personal knowledge.
2. I am an officer or representative with \_\_\_\_\_, a non-governmental entity. I am authorized to provide this affidavit on behalf of \_\_\_\_\_.
3. The non-governmental entity, \_\_\_\_\_, does not use coercion for labor or services as defined in s.787.06, Florida Statutes.

FURTHER AFFIANT SAYETH NOT.

\_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_  
(Affiant)

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

Sworn to (or affirmed) and subscribed before me by means of \_\_\_\_ physical presence or \_\_ online notarization, this \_\_\_\_ day of \_\_\_\_\_, by  
\_\_\_\_\_  
(Affiant)

\_\_\_\_\_  
(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 \_\_\_\_\_