

RESOLUTION NO. 2016- 169

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO NEGOTIATE AND EXECUTE A CONTRACT ON BEHALF OF THE COUNTY WITH SUPERIOR CONSTRUCTION CO. SOUTHEAST, LLC FOR THE DESIGN BUILD OF A SECTION OF RACE TRACK ROAD LOCATED BETWEEN LIFESPING WAY AND BARTRAM PARK BOULEVARD AND TRANSFER FUNDS FROM THE TRANSPORTATION TRUST FUND CAPITAL RESERVES AND DIRECT FUTURE DEVELOPMENT OBLIGATION FUNDS OF THE BARTRAM PARK DRI AND JULINGTON LAKES PROPORTIONATE FAIR SHARE AGREEMENTS TO REIMBURSE THE TRANSPORTATION TRUST FUND RESERVE FOR THE PORTION USED DIRECTLY AND SOLELY FOR THE WIDENING OF RACE TRACK ROAD BETWEEN ST. JOHNS PARKWAY AND BARTRAM PARK BOULEVARD.

RECITALS

WHEREAS, In 2015 the Florida Department of Transportation (FDOT) commenced the construction of the 9B Highway project in St. Johns County. The project will extend the existing SR 9B interchange from I-95 to CR 2209 (St. Johns Parkway) including a connector to Race Track Road; and

WHEREAS, With the connection of the proposed 9B Highway to Race Track road, this roadway is anticipated to receive increased vehicular traffic, congestion and consequently reduced level of service (LOS) to the residents and traveling public; and

WHEREAS, The SR 9B project is anticipated to be completed by March 2018 and since the project impacts Race Track Road, the County had to provide a Temporary Construction Easement (TCE) to FDOT along the Race Track Road corridor; and

WHEREAS, the TCE restricts the County's ability to solicit bids from contractors other than the FDOT contractor to widen Race Track Road until the completion of the SR 9B Highway project; and

WHEREAS, the St. Johns County desires to enter into a design build contract with Superior Construction Co, Southeast, LLC to provide services for the construction of a portion of Race Track Road from St. Johns Parkway to Bartram Park Boulevard; and

WHEREAS, the scope of the project shall generally include furnishing all labor, material, equipment and other items necessary for roadway, bridge and intersection construction; and.

WHEREAS, the project shall be constructed to be completed with the opening of the 9B connector road to Race Track road, West Peyton Parkway; and

WHEREAS, the County has reviewed the terms, provisions, conditions and requirements of the proposed contract (attached hereto and incorporate herein), and finds that entering into the contract serves a public purpose; and

WHEREAS, the developer contributions from the Julington Lakes proportionate fair share agreement and the Bartram Park DRI agreement that would help fund the widening of Race Track Road have not been collected in full amount; and

WHEREAS, the County seeks to transfer \$5,200,000.00 from Transportation Trust Fund (TTF) Reserves to fully fund improvements to Race Track Road; and

WHEREAS, the TTF Capital Reserves used directly and solely for the widening of Race Track Road as described above will be reimbursed by developer commitments and future funds collected thru the Julington Lakes and Bartram Park DRI Development Order (RES 2014-92) as allocated to the West Segment to Race Track Road; and

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.

Section 2. The County Administrator, or designee, is hereby authorized to execute the Design Build Contract on behalf of the County for the purposes mentioned above.

Section 3. The County Administrator, or designee, is hereby authorized to transfer \$5.2 million from its Transportation Trust Fund (TTF) reserves to fund the Race Track Road projects and direct future development obligation funds of the Bartram Park DRI and the Julington Lakes Proportionate Fair Share agreements to reimburse the TTF reserves for the widening of the portion of Race Track Road between St. Johns Parkway and Bartram Park Boulevard on behalf of the County for the purposes mentioned above.

Section 4: The Board of County Commissioners authorizes the County Administrator or designee to execute any other paperwork associated with or necessary to accomplish the overall goal set forth in the Design Build Contract.

Section 5. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 7th day of June, 2016.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: Jeb S. Smith
Jeb S. Smith, Chair

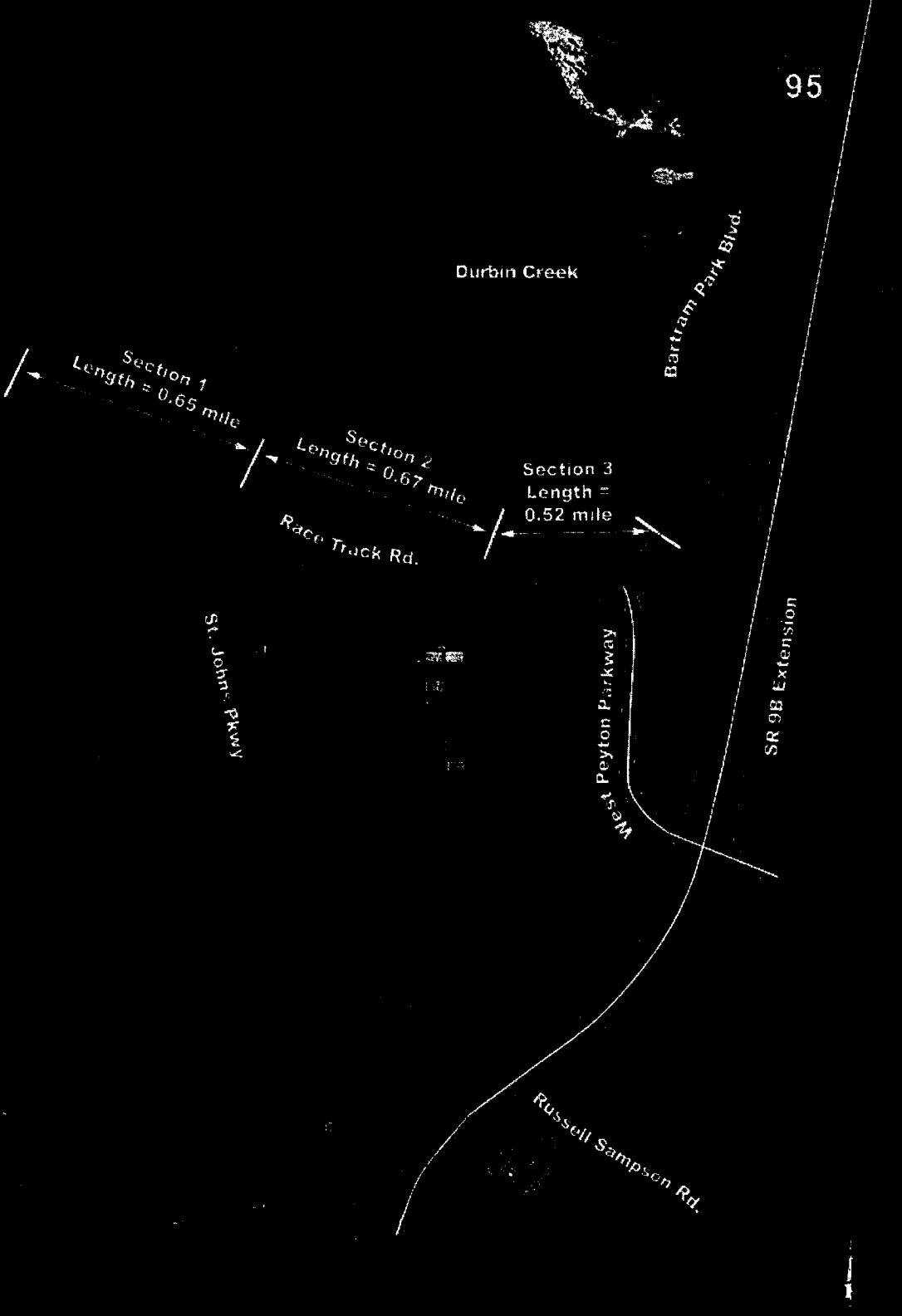
ATTEST: Hunter S. Conrad, Clerk

By: Pam Halterman
Deputy Clerk



RENDITION DATE 6/9/16

Attachment A





STANDARD DESIGN-BUILD SERVICES AGREEMENT BETWEEN OWNER & DESIGN-BUILDER

This Agreement ("Agreement") is made on this _____ day of _____, 2016, by and between **ST. JOHNS COUNTY, FL** ("Owner"), a political subdivision of the State of Florida, with administrative offices located at 500 San Sebastian View, St. Augustine, Florida 32084, and _____ ("Design-Builder"), a corporation for profit authorized to do business in the state of Florida, with a mailing address of _____, to perform all work in connection with _____ ("Project"), as said work is set forth in the Plans and Specifications furnished by the Design-Builder and other Contract Documents hereinafter specified. In consideration of the mutual covenants and obligations contained herein, the County and Design-Builder hereby agree as follows.

ARTICLE 1. INTENT OF THE OWNER

It is the intent of the Owner to describe a functionally complete Project to be designed and constructed by the Design-Builder in accordance with Owner-reviewed and fully permitted Contract Documents prepared by the Design-Builder and accepted by the Owner. It is the further intent of the Owner to require complete, correct and timely execution of the Work described herein. Whether or not specifically expressed, all labor, materials, tools and equipment, implied or inferred by the Contract Documents as being required to produce the intended results shall be provided by the Design-Builder for the Contract Price.

ARTICLE 2. CONTRACT DOCUMENTS

2.1 Agreement and Contract Documents.

- 2.1.1 The Contract Documents consist of this Agreement, all Amendments and Exhibits thereto, Change Orders, Work Directive Changes, Field Orders, and the Solicitation Documents, including addenda relating thereto. All of the foregoing Contract Documents are incorporated by reference and made a part of this Agreement (all of said documents, including this Agreement, sometimes being referred to herein as the "Contract Documents" and sometimes as the "Agreement"). A copy of the Contract Documents shall be maintained by Design-Builder at the Project site at all times during performance of the Work described herein.
- 2.1.2 The Contract Documents listed above represent the entire and integrated agreement between the parties hereto, and supersede any prior negotiations, representations or agreements, either written or oral.
- 2.1.3 This Agreement is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Agreement.
- 2.1.4 In case of any inconsistency or conflict among the provisions of the Agreement and any other terms and conditions of any documents comprising the Contract Documents, the provisions of the Agreement shall control. Concerning the Contract Documents, the order of precedence shall be as follows: 1) the Agreement, including Amendments and Exhibits; 2) Change Orders; 3) Work Directive Changes; 4) Field Orders; 5) the Solicitation Documents, including addenda.
- 2.1.5 Where there is a conflict between any provisions set forth in this Agreement and a more stringent state or federal provision applicable to the Project, the more stringent state or federal provision shall prevail.
- 2.1.6 Reference to standard specifications, manuals or codes of any technical society, organization, or association, or to laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the standard specification, manual, code, laws or regulations in effect at the time of the date of the execution of this Agreement.

- 2.1.7 Dimensions given in figures are to hold preference over scaled measurements on the Drawings and in the Design. The Design-Builder shall not proceed when in doubt as to any dimension or measure but shall seek clarification from the Owner.
- 2.1.8 Neither the organization of any of the Contract Documents into articles, divisions, sections, paragraphs or other categories, nor the organization of arrangement of the design shall control the Design-Builder in dividing the Work or in establishing the extent or Scope of the Work to be performed by subcontractors.
- 2.1.9 Nothing contained in this Agreement shall create or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Design-Builder.
- 2.1.10 This Agreement shall be effective on the date of full execution by both parties hereto.
- 2.1.11 The Contract Documents, and each of them, shall remain the property of the Owner. The Design-Builder shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Design-Builder use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

2.2 Interpretation.

- 2.2.1. When a word, term, or phrase is used in this Agreement, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted technical or trade meaning in the industry; and third, if there is no generally accepted meaning in the industry, according to its common and customary usage.
- 2.2.2. The words "include", "includes", or "including" as used in this Agreement, shall be deemed to be followed by the phrase, "without limitation".
- 2.2.3. Words or terms used as nouns in this Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

2.3 Incorporation of Exhibits.

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

- Exhibit A: Pricing Proposal
- Exhibit B: Technical Proposal
- Exhibit C: Agenda Item
- Exhibit D: Resolution No:
- Exhibit E: All bonds and insurances

ARTICLE 3. SCOPE OF WORK

3.1 Design-Builder shall perform all design and construction services and provide all materials, equipment, tools and labor, implied or reasonably inferable from the Contract Documents, required to complete the Project (collectively "Work"). The Work to be performed by the Design-Builder is generally described as follows:

3.2 The Design-Builder hereby agrees to complete the Project described by the Contract Documents including furnishing the architecture, engineering, landscaping architecture and land surveying services, labor, material, equipment and other services necessary to perform all of the Work described in the

Contract Documents including Drawings and addenda thereto, to be constructed in accordance with the requirements and provisions of this Agreement, all applicable laws, regulations and standards.

- 3.3 The Design-Builder shall prepare and the Owner shall approve a design and construction schedule ("Progress Schedule") of the Project as follows:
 - 3.4.1 Schematic Design Phase
 - 3.4.2 Design Development Phase
 - 3.4.3 Working Drawings and Specifications Phase
 - 3.4.4 Permitting Phase
 - 3.4.5 Construction Phase
 - 3.4.6 The Progress Schedule shall include dates for commencement and completion of the various stages of design and construction and shall be revised as required by the conditions of the Work, subject to approval by the Owner. The Progress Schedule shall be updated monthly based upon the actual percentage of the Project completed and submitted to the Owner as part of each pay request.
 - 3.4.7 The Design-Builder shall pay all royalties and license fees for materials, methods and systems incorporated in the Work. The Design-Builder shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof except when a particular design process or product is specified by the Owner. In such case, the Design-Builder shall be responsible for such loss only if it has reason to believe that the design, process or product so specified is an infringement of a patent and fails to provide such information to the Owner.

ARTICLE 4. CONTRACT PRICE

- 4.1 The Owner shall pay, and the Design-Builder shall accept, as full and complete compensation for all of the Work required herein, the fixed sum of \$Amount Written in Words (\$Amount Written in Numerals). The amount set forth in this Paragraph 4.1 shall constitute the Contract Price, including all costs, expenses and fees related to completion of the Project, and shall not be modified except as otherwise provided in this Agreement.
- 4.2 Within **ten (10)** calendar days of the Effective Date of this Agreement, the Design-Builder shall submit to the Owner for review and approval a Schedule of Values allocating the Contract Price to the various phases of the Work. The Design-Builder's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Owner may require to substantiate its accuracy. The Design-Builder shall not imbalance the Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Design-Builder shall constitute a material breach of this Agreement. The Schedule of Values shall be used only as a basis for the Design-Builder's request for payment ("Application for Payment") and shall only constitute such basis after it has been agreed upon in writing by the Owner. The Owner may terminate this Agreement without liability of any kind if the Schedule of Values is not agreed upon within **twenty-five (25)** calendar days of the effective date hereof.
- 4.3 Payment Procedure. The Owner shall pay the Contract Price to the Design-Builder as provided below.
 - 4.3.1 Progress Payments. The Design-Builder may submit to the Owner a request for payment ("Application for Payment") for Work completed on the 25th day of each month after commencement of the Work. The Application for Payment shall include such detail, together with supporting evidence, as may be required by the Owner. Such Application for Payment shall be signed by the Design-Builder and shall constitute the Design-Builder's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full accordance with this Agreement, and that the Design-Builder knows of no reason why payment should not be made as requested. Thereafter, the Owner will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as

required by this Agreement. The Owner shall determine and certify the amount properly owing to the Design-Builder. The Owner shall make partial payments on account of the Contract Price within twenty five (25) business days following receipt of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Owner less such amounts, if any, otherwise owing by the Design-Builder to the Owner or which the Owner shall have the right to withhold as authorized by this Agreement. The Owner's certification of the Design-Builder's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 4.4 herein below.

- 4.3.2 The Design-Builder warrants that title to all Work included in an Application for Payment shall pass to the Owner no later than the time of payment. The Design-Builder further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Design-Builder or any other person or entity whatsoever.
- 4.3.3 The Design-Builder shall promptly pay each Subcontractor of the amount paid to the Design-Builder on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Design-Builder has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Design-Builder of amounts otherwise due hereunder naming the Design-Builder and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.
- 4.3.4 No progress payment, nor any use or occupancy of the Project by the Owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Agreement.
- 4.4 Withheld Payment. The Owner may decline to make payment, may withhold funds in whole or in part, and, if necessary, may demand the return of some or all of the amounts previously paid to the Design-Builder, to protect the Owner from loss because of:
- a. defective Work not remedied by the Design-Builder nor, in the opinion of the Owner, likely to be remedied by the Design-Builder;
 - b. claims filed or reasonable evidence indicating probable filing of claims by other parties against the Owner, the Owner's property or the Design-Builder;
 - c. failure by the Design-Builder to pay Subcontractors or others in a prompt and proper fashion;
 - d. evidence that the balance of the Work cannot be completed in accordance with this Agreement for the unpaid balance of the Contract Price;
 - e. evidence that the Work will not be completed in the time required for Substantial or Final completion;
 - f. persistent failure to carry out the Work in accordance with this Agreement;
 - g. damage to the Owner or a third party to whom the Owner is, or may be, liable;
 - h. Liquidated damages as provided elsewhere in this Agreement;
 - i. As-built drawings not being in a current and acceptable state.

In the event that the Owner makes written demand upon the Design-Builder for amounts previously paid by the Owner as contemplated in this Paragraph 4.4, the Design-Builder shall promptly comply with such demand. When the above grounds are removed or resolved, or the Design-Builder provides a surety bond or consent of surety to protect the Owner in the amount withheld, satisfactory to the Owner, payment may be made in whole or in part, as applicable.

- 4.5 Unexcused Failure to Pay. If within twenty five (25) business days after the date established herein for payment to the Design-Builder by the Owner, the Owner, without cause or basis hereunder, fails to pay the Design-Builder any amount then due and payable to the Design-Builder, then the Design-Builder may after seven (7) additional days provide written notice to the Owner, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from

the Owner have been received. Any payment not made within twenty five (25) business days after the date due shall bear interest at the rate of Twelve (12%) percent per annum.

- 4.6 Retainage. Ten percent (10%) of all monies earned by the Design-Builder shall be retained by the Owner until Final Completion and acceptance by the Owner in accordance with Paragraph 4.8 hereof, except that after fifty percent (50%) of the Project has been completed, the Owner shall reduce the retainage to five percent (5%) of all monies previously earned and all monies earned thereafter, and after ninety (90%) of the Work has been completed, the Owner may reduce the retainage to two and one-half percent (2 ½%) of all monies previously earned and all monies earned thereafter. Any reduction in retainage below five percent (5%) shall be at the sole discretion of the Owner and the Design-Builder shall have no entitlement to a reduction. Any interest earned on retainage shall accrue to the benefit of the Owner.
- 4.7 Substantial Completion.
- 4.7.1 When the Design-Builder believes the work is substantially complete, the Design-Builder shall submit to the Owner a list of items to be completed or corrected. When the Owner on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the Substantial Completion Date, shall state the responsibilities of the Owner and the Design-Builder for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Design-Builder shall complete the items listed therein. Guarantees required by this Agreement shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Owner and the Design-Builder for their written acceptance of the responsibilities assigned to them in such Certificate.
- 4.7.2 Upon Substantial Completion of the Work, and execution by both the Owner and the Design-Builder of the Certificate of Substantial Completion, and upon delivery to the Owner appropriate releases and waivers of claims and liens from all Subcontractors and material-men of the Agreement for Work performed and/or materials delivered for the Project to the date of Substantial Completion, the Owner shall pay the Design-Builder an amount sufficient to increase total payments to the Design-Builder to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable cost as determined by the Owner all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims. If any Subcontractor or material-man fails or refuses to provide an appropriate release and waiver of claims and liens as required by the Owner, the Design-Builder shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.
- 4.8 Final Completion, Acceptance and Final Payment
- 4.8.1 Upon receipt of written notice from the Design-Builder that the Project is ready for final inspection, the Owner, within Seven (7) days, shall make an inspection thereof. If the Owner finds that the Work is complete in full accordance with the Contract Documents and that this Agreement has been fully performed, the Owner will issue a Final Certificate for Payment. In the event that it is necessary to repeat final inspection of the Work, the Design-Builder shall bear the cost of such repeated final inspection(s), which cost may be deducted by the Owner from the Design-Builder's final payment. Final Payment shall not be made until the Project is inspected and accepted by the Owner and all other Authorities having jurisdiction under Florida Laws or regulations, as applicable.
- 4.8.2 The Design-Builder shall not be entitled to final payment unless and until it submits to the Owner an affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of claims and liens from all subcontractors of the Design-Builder and of any and all other parties required by the Owner; consent of surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Design-Builder shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

- 4.8.3 The Owner shall make final payment of all sums due the Design-Builder within twenty-five (25) business days of the Owner's execution of a final Certificate for Payment.
- 4.8.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Design-Builder except for those claims previously made in writing against the Owner by the Design-Builder, pending at the time of final payment, and identified in writing by the Design-Builder as unsettled at the time of its request for final payment.

ARTICLE 5. BONDS AND SURETY COMPANY QUALIFICATIONS

- 5.1 The Design-Builder shall provide Performance and Payment Bonds, in the form provided by the Owner upon full execution of this Agreement, in the amount of one hundred percent (100%) of the Contract Price, the costs of which shall be paid by the Design-Builder. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to the Owner; provided however, the surety shall be rated as A (excellent) or better and Class V or higher rating as to financial size category and the amount required shall not exceed (2%) of the reported policyholders surplus, all as reported in the most current Best's Key Rating Guide (Best's Key Rating Guide), published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York, 10038.
- 5.2 The Design-Builder shall furnish a separate Public Construction Bond to the Owner. Such bond shall set forth a penal sum in an amount not less than the Contract Price. The bond furnished by the Design-Builder shall incorporate by reference the terms of this Agreement as fully as though they were set forth verbatim in such bond. The Public Construction Bond shall provide that in the event the Contract Price is adjusted by Change Order executed by the Design-Builder, the penal sum of the bond shall be deemed increased by like amount. The Public Construction Bond furnished by the Design-Builder shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner.
- 5.3 All bonds shall be originals and issued or countersigned by a duly authorized agent. Upon request by the Owner, the Design-Builder shall provide satisfactory evidence of authority of the person or persons executing such bond. Attorneys-in-fact who execute bonds or other surety instruments shall attach with each bond or surety instrument a certified and effectively dated copy of their power of attorney.
- 5.4 Surety must be authorized to do business in the State of Florida, and shall comply with all applicable provisions of § 255.05 of the Florida Statutes.
- 5.5 The life of the bonds shall extend through the warranty period, but in no case expire prior to twelve (12) months beyond the date of Final Completion, and shall contain a waiver of alteration to the terms of the Contract, extensions or time and/or forbearance on the part of the Owner.
- 5.6 If the surety for any bond furnished by the Design-Builder is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida or it ceases to meet the requirements imposed by the Contract Documents, the Design-Builder shall, within five (5) calendar days thereafter substitute another bond and surety, both of which shall be subject to the Owner's approval. Failure by the Design-Builder to maintain its bonds in full force and effect at all times, including the warranty period, shall be grounds for termination of this Agreement.
- 5.7 In accordance with § 255.05 of the Florida Statutes, the Design-Builder shall be required to execute and record the Performance and Payment Bonds. The bonds must state the name and principal business address of both the Principal and the Surety and a description of the Project sufficient to identify it.

ARTICLE 6. CONTACT TIME AND LIQUIDATED DAMAGES

- 6.1 Time is of the essence in the performance of the Work described herein. The Design-Builder shall commence the Work within ten (10) calendar days from the date the Owner issues a written Notice to

Proceed ("Commencement Date"). The Work shall be substantially completed within # of Days in Words (XXX) consecutive calendar days from the Commencement Date, and shall be fully completed and deemed ready by the Owner for Final Completion within # of Days in Words (XX) consecutive calendar days from the Substantial Completion Date. The Contract Time shall be the time period from the Commencement Date to the date of Final Completion totaling # of Days in Words (XXX) consecutive calendar days.

- 6.2 The Design-Builder recognizes that, since time is of the essence for this Agreement, the Owner will suffer damages that are difficult to determine and accurately specify if the Work is not fully completed and deemed ready for Final Completion within the time specified. Should the Design-Builder fail to achieve Final Completion within the time specified above, the Design-Builder shall pay, as liquidated damages, but not as a penalty, the sum of \$1,423.00 per day for each calendar day of unexcused delay until Final Completion is achieved.
- 6.3 The Design-Builder hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the Owner's actual damages at the time of contracting if the Design-Builder fails to fully complete the Work in a timely manner as provided herein.
- 6.4 When any period of time is referenced to by day herein, it shall be computed to exclude the first day 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 law of the applicable jurisdiction, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday of legal holiday.

ARTICLE 7. OWNER'S RIGHTS AND RESPONSIBILITIES

- 7.1 Upon execution of this Agreement, the Owner will furnish to the Design-Builder any written and tangible materials in its possession concerning conditions below ground at the site of the Project. Such written and tangible materials are furnished to the Design-Builder only in order to make complete disclosure of such materials and for no other purpose. By furnishing such materials, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly, or at all, and shall have no liability therefore. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site. Copies may be provided instead of originals.
- 7.2 With the exception of any permits and fees normally the responsibility of the Design-Builder, the Owner will obtain all approvals, easements, and the like required for construction of the Project.
- 7.3 The Owner will furnish the Design-Builder, free of charge, five (5) copies of the Contract Documents for performance of the Work. The Design-Builder will be charged, and shall pay the Owner the cost of reproduction for each additional set of Contract Documents requested.
- 7.4 The Owner will provide access to and make all provisions for the Design-Builder to enter upon public property as required for the Design-Builder to perform the Work described herein.
- 7.5 Right to Stop Work. If, as deemed by the Owner, the Design-Builder persistently fails or refuses to perform the Work in accordance with the Contract Documents, the Owner may order the Design-Builder to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner directs that Work be resumed. In such event, the Design-Builder shall immediately comply with such directive.
- 7.6 Right to Perform Work. In the event the Owner stops the Work as described herein, and the Design-Builder fails to, within seven (7) calendar days of that time, provide adequate assurance to the Owner that the cause of such stoppage is eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Design-Builder, proceed to perform the Work. Under such circumstances, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting deficiencies in the Work, plus compensation for any additional

services and expenses necessitated thereby. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8. DESIGN-BUILDER'S RIGHTS AND RESPONSIBILITIES

- 8.1 The Design-Builder shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data, and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission that the Design-Builder may discover with respect to such documents before proceeding with the affected Work. The issuance or the express or implied approval by the Owner of the Contract Documents, the Shop Drawings and the Product Data shall not relieve the Design-Builder of the continuing duties imposed herein, nor shall such approval be evidence of the Design-Builder's compliance with this Agreement. By execution of this Agreement, the Design-Builder acknowledges and represents that it has received, reviewed and carefully examine such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction and that the Design-Builder has not, does not and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.
- 8.2 The Design-Builder shall perform the Work strictly in accordance with the Contract Documents.
- 8.3 The Design-Builder shall supervise and direct the Work using the Design-Builder's best skill, effort and attention. The Design-Builder shall be responsible to the Owner for any and all acts or omissions of the Design-Builder, its employees and others engaged in the Work on behalf of the Design-Builder.
- 8.4 Warranty. The Design-Builder warrants to the Owner that all labor furnished to complete the Work under this Agreement will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, and that materials and equipment furnished will be of good quality, free from faults and defects and in strict conformance with the Contract Documents. This warranty shall survive termination of this Agreement and shall not be affected by Final Payment hereunder. All work not conforming to these requirements may be considered defective.
- 8.5 Design-Builder shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Design-Builder shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.
- 8.5 Supervision. The Design-Builder shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Design-Builder to the contrary, the superintendent shall be deemed the Design-Builder's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Engineer.
- 8.6 Key supervisory personnel assigned by the Design-Builder to this Project are as follows:

Name	Function
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Design-Builder, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Design-Builder shall be bound by the provisions of this Sub-Article 8.6 as though such individuals have been listed above.

- 8.7 The Design-Builder, within fifteen (15) days of commencing the Work, shall submit to the Owner, the Design-Builder's schedule for completing the Work. The Design-Builder's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner. Failure by the Design-Builder to strictly comply with the provisions of this Paragraph 8.7 shall constitute a material breach of this Agreement.
- 8.8 The Design-Builder shall continuously maintain at the site, for the benefit of the Owner, one record copy of this Agreement marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Design-Builder shall maintain at the site for the Owner approved Shop Drawings, Product Data, Samples and other similar required submittals. Upon Final Completion of the Work, all of these record documents shall be delivered to the Owner.
- 8.9 Shop Drawings, Product Data and Samples
- 8.9.1 Shop Drawings, Product Data, Samples and other submittals from the Design-Builder do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Design-Builder intends to implement the Work in conformance with information received from the Contract Documents. All Shop Drawings, Product Data, Samples and other submittals shall belong to Owner and shall be delivered, or returned to Owner, as applicable, prior to Substantial Completion.
- 8.10 Cleaning the Site and the Project. The Design-Builder shall keep the site reasonably clean during performance of the Work. Upon Final Completion of the Work, the Design-Builder shall clean the site and the Project and remove all waste, together with all of the Design-Builder's property therefrom.
- 8.11 Access to Work. The Owner shall have access to the Work at all times from commencement of the Work through Final Completion. The Design-Builder shall take whatever steps necessary to provide access when requested.
- 8.12 Indemnity. The Design-Builder shall indemnify and hold harmless the Owner, its officers, employees, agents and representatives from, and against, any, and all, administrative/legal/equitable liability, claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the Work noted in either the Scope of Work or the Contract Documents, that are referenced and considered a part of this Agreement. It is specifically noted that such liability, claims, damages, losses or expenses include any of those referenced instances attributable to bodily injury, sickness, disease, or death, or to injury to, or destruction of, personal and/or real property, including the loss of use resulting therefrom or incident to, connected with, associated with or growing out of direct and/or indirect negligent or intentional acts or omissions by the Design-Builder, a Subcontractors, or anyone directly, or indirectly employed by them, or anyone for whose acts the Design-Builder or Subcontractors may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder.
- 8.12.1 Design-Builder hereby acknowledges the receipt of ten dollars and other goods and valuable consideration from the Owner which has been paid to him as specific consideration for the indemnification provided herein.
- 8.12.2 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Design-Builder, a Subcontractors, any one directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder or a Subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 8.13 Safety
- 8.13.1 The Design-Builder shall be responsible for supervising all safety precautions, including initiating and maintaining such programs in connection with the performance of the Contract.

8.13.2 The Design-Builder shall designate a member of the onsite construction team whose duty shall be the prevention of accidents. Unless otherwise designated in writing by the Design-Builder to the Owner and the Engineer, this person shall be the Design-Builder's Superintendent.

ARTICLE 9. CONTRACT ADMINISTRATION

9.1 The Engineer.

9.1.1 The Engineer for this project is _____. In the event the Owner should find it necessary or convenient to replace the Engineer, the status of the replacement Engineer shall be that of the former Engineer.

9.2 Engineer's Administration

9.2.1 The Engineer, unless otherwise directed by the Owner in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Agreement. The Engineer shall be the Owner's representative from the Effective Date of this Agreement until final payment has been made. The Engineer shall be authorized to act on behalf of the Owner only to the extent provided in this Agreement.

9.2.2. The Owner and the Design-Builder shall communicate with each other in the first instance through the Engineer.

9.2.3 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Design-Builder. The Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Design-Builder.

9.2.4 The Engineer will review the Design-Builder's Applications for Payment and will certify to the Owner for payment to the Design-Builder, those amounts then due the Design-Builder as provided in this Agreement.

9.2.5 The Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Agreement. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements at Design-Builder's expense.

9.2.6 The Engineer will review and approve, or take other appropriate action as necessary, concerning the Design-Builder's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

9.2.7 The Engineer will prepare Change Orders and may authorize minor changes in the Work by field Order as provided elsewhere herein.

9.2.8 The Engineer shall, upon written request from the Design-Builder, conduct inspections to determine the date of Substantial Completion and the date of Final Completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Agreement and will issue a final Certificate for Payment upon compliance with the requirements of this Agreement.

9.2.9 The Engineer's decision in matters relating to aesthetic effect shall be final if consistent with the intent of this Agreement.

9.3 Claims by the Design-Builder

9.3.1 All Design-Builder claims shall be initiated by written notice and claim to the Owner and the Engineer. Such written notice and claim must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

- 9.3.2. Pending final resolution of any claim of the Design-Builder, the Design-Builder shall diligently proceed with performance of this Agreement and the Owner shall continue to make payments to the Design-Builder in accordance with this Agreement. The resolution of any claim under this Paragraph 9.3 shall be reflected by a Change Order executed by the Owner, the Engineer and the Design-Builder.
- 9.3.3 Claims for Concealed and Unknown Conditions. Should concealed and unknown conditions be encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Agreement, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Agreement, be encountered, wherein the Contract Documents or Standard Construction industry practice have not placed the responsibility of discovering such concealed and unknown conditions upon the Design-Builder prior to the Design-Builder submitting his bid for the Work, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Design-Builder for concealed or unknown conditions, the Contractor must give the Owner and the Engineer written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Design-Builder to make the written notice and claim as provided in this Sub-Article shall constitute a waiver by the Design-Builder of any claim arising out of or relating to such concealed or unknown condition.
- 9.3.4 Claims for Additional Costs. If the Design-Builder wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Design-Builder shall give the Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Design-Builder before proceeding to execute any additional or changed Work. The failure by the Design-Builder to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 9.3.4.1 In connection with any claim by the Design-Builder against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Design-Builder's costs shall be strictly limited to direct costs incurred by the Design-Builder and shall in no event include indirect costs or consequential damages of the Design-Builder.
- 9.3.4.2 The Owner shall not be liable to the Design-Builder for claims of third parties, including Subcontractors, unless and until liability of the Design-Builder has been established therefore in a court of competent jurisdiction.
- 9.3.5 Claims for Additional Time. If the Design-Builder is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Design-Builder's control, then the date for achieving Substantial Completion of the work shall be extended upon the written notice and claim of the Design-Builder to the Owner and the Engineer, for such reasonable time as the Engineer may determine. Any notice and claim for an extension of time by the Design-Builder shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claims and shall set forth in detail the Design-Builder's basis for requiring additional time in which to complete the Project. In the event the delay to the Design-Builder is a continuing one, only one notice and claim for additional time shall be necessary. If the Design-Builder fails to make such claims as required in this Sub-Article, any claim for an extension shall be waived. This paragraph shall not be deemed to waive any damage for delay that is covered by insurance.
- 9.3.5.1 Delays and Extensions of Time. An extension of Contract Time will not be given due to weather conditions unless such weather conditions (wind and rain) for any 30 day period are, on the average for that 30 days, more severe than average for the same 30 days for the previous ten years, and caused delay. In requesting extensions of time for weather conditions, Design-Builder shall present complete

records and averages referred to above, and such requests shall document how weather conditions delays progress of the Work.

9.4 Field Orders

- 9.4.1 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Design-Builder. The Design-Builder shall carry out such Field Orders promptly.

ARTICLE 10. SUBCONTRACTORS

10.1 Definition

- 10.1.1 A Subcontractor is an entity which has a direct contract with the Design-Builder to perform a portion of the Work.

10.2 Award of Subcontracts

- 10.2.1 Upon execution of the Design-Builder, the Design-Builder shall furnish to the Owner, in writing, the names of persons or entities proposed by the Design-Builder to act as a Subcontractors on the Project. The Owner shall promptly reply to the Design-Builder, in writing, stating any objections the Owner may have to such proposed Subcontractors. The Design-Builder shall not enter into a contract with a proposed Subcontractor with reference to whom the Owner has made timely objection.
- 10.2.2 All subcontracts shall afford the Design-Builder rights against the Subcontractors which correspond to those rights afforded to the Owner against the Design-Builder herein.

ARTICLE 11. CHANGES IN THE WORK

11.1 Changes Permitted

- 11.1.1 Changes in the Work within the general scope of this Agreement, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Agreement, by Change Order or by Field Order.
- 11.1.2 Changes in the Work shall be performed under applicable provisions of this Agreement and the Design-Builder shall proceed promptly with such changes.

11.2 Change Order Defined

- 11.2.1 Change Order shall mean a written order to the Design-Builder executed by the Owner and the Engineer, issued after execution of this Agreement, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by Change Order.

11.3 Changes in the Contract Price

- 11.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Design-Builder as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Design-Builder's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Design-Builder, then, as provided in Sub-Article 11.3.2 below.
- 11.3.2 If no mutual agreement occurs between the Owner and the Design-Builder as contemplated in Sub-Article 11.3.1 above, the change in the Contract Price, if any, shall then be determined by the Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price,

a reasonable allowance for direct job site overhead and profit. In such case, the Design-Builder shall present, in such form and with such content as the Owner or the Engineer requires, an itemized accounting of such expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by pre-existing agreement or by custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Design-Builder or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work and paid by Design-Builder, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with the Design-Builder's home office or other non-job site overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the Owner, payments on account shall be made to the Design-Builder on the Engineer's Certificate for Payment.

11.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Design-Builder, the applicable unit prices shall be equitably adjusted.

11.4 Minor Changes

11.4.1 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Agreement. Such minor changes shall be made by written Field Order, and shall be binding upon the Owner and the Design-Builder. The Design-Builder shall promptly carry out such written Field Orders.

11.5 Effect of Executed Change Order

11.5.1 The execution of a Change Order by the Design-Builder shall constitute conclusive evidence of the Design-Builder's agreement to the ordered changes in the Work, this Agreement as thus amended, the Contract Price and the Contract Time. The Design-Builder, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

11.6 Notice to Surety; Consent

11.6.1 The Design-Builder shall notify and obtain the timely consent and approval of the Design-Builder's surety with reference to all Change Orders if such notice, consent or approval is required by the Design-Builder's surety or by law. The Design-Builder's execution of the Change Order shall constitute the Design-Builder's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE 12. UNCOVERING AND CORRECTING WORK

12.1 Uncovering Work

12.1.1 If any of the work is covered contrary to the Engineer's request or to any provisions of this Agreement, it shall, if required by the Engineer or the Owner, be uncovered for the Engineer's inspection and shall be properly replaced at the Design-Builder's expense without change in the Contract Time.

12.1.2 If any of the Work is covered in a manner not described in Sub-Article 12.1.1 above, it shall, if required by the Engineer or Owner, be uncovered for the Engineer's inspection. If such Work conforms strictly with this Agreement, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Agreement, the Design-Builder shall pay the costs of uncovering and proper replacement.

12.2 Correcting Work

- 12.2.1 The Design-Builder shall immediately proceed to correct Work rejected by the Engineer as defective or failing to conform to this Agreement. The Design-Builder shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the Engineer's services and expenses made necessary thereby.
- 12.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Agreement, the Design-Builder shall correct it within 7 days at Design-Builder's expense upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Agreement. With respect to Work first performed and completed after Substantial Completion, this one year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.
- 12.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Design-Builder has under this Agreement. Establishment of the one year time period in Sub-Article 11.2.2 relates only to the duty of the Design-Builder to specifically correct the Work, and has no relationship to the time which the obligation to comply with the Contract Documents may be sought to be enforced.
- 12.3 Owner May Accept Defective or Nonconforming Work
- 12.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Design-Builder shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE 13. CONTRACT TERMINATION

13.1 Termination by the Design-Builder

- 13.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Design-Builder or any person or entity working directly or indirectly for the Design-Builder, the Design-Builder may, upon ten (10) days' written notice to the Owner and the Engineer, terminate performance under this Agreement and recover from the Owner payment for the actual reasonable expenditures of the Design-Builder (as limited in Sub-Article 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.
- 13.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Design-Builder for a period of fifteen (15) days after receiving written notice from the Design-Builder of its intent to terminate if such failure is not substantially corrected within fifteen (15) days, the Design-Builder may terminate performance under this Agreement by written notice to the Engineer and the Owner. In such event, the Design-Builder shall be entitled to recover from the Owner as though the Owner had terminated the Design-Builder's performance under this Agreement for convenience pursuant to Sub-Article 13.2.1 hereunder.

13.2 Termination by the Owner

13.2.1 For Convenience

- 13.2.1.1 The Owner may for any reason whatsoever terminate performance under this Agreement by the Design-Builder for convenience. The Owner shall give written notice of such termination to the Design-Builder specifying when termination becomes effective.

13.2.1.2 The Design-Builder shall incur no further obligations in connection with the Work and the Design-Builder shall stop Work when such termination becomes effective. The Design-Builder shall also terminate outstanding orders and subcontracts. The Design-Builder shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Design-Builder to assign the Design-Builder's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

13.2.1.3 The Design-Builder shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Design-Builder has.

13.2.1.4 Termination.

- (a) The Design-Builder shall submit a termination claim to the Owner and the Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Engineer. If the Design-Builder fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Design-Builder, an amount derived in accordance with Sub-Article (c) below.
- (b) The Owner and the Design-Builder may agree to the compensation, if any, due to the Design-Builder hereunder.
- (c) Absent agreement to the amount due to the Design-Builder, the Owner shall pay the Design-Builder the following amounts:
 - (i) Contract prices for labor, materials, equipment and other services accepted under this Agreement.
 - (ii) Reasonable costs incurred in preparing to perform and in performing a portion of the work prior to termination, and not included in (i) or (ii), and in terminating the Design-Builder's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Design-Builder would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - (iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Sub-Article 13.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Design-Builder under this Sub-Article 13.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

13.2.2 For Cause.

13.2.2.1 If the Design-Builder persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of either a substantial violation, or a material provision of this Agreement, then the Owner may by written notice to the Design-Builder, without prejudice to any other right or remedy, terminate the employment of the Design-Builder and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Design-Builder and may finish the Work by whatever methods it may deem expedient. In such case, the Design-Builder shall not be entitled to receive any further payment until the Work is finished.

- 13.2.2.2 If the unpaid balance of the Contract Price less any liquidated damages due under this Agreement exceeds the cost of finishing the work, including compensation for the Engineer's additional services and expenses made necessary thereby, such excess shall be paid to the Design-Builder. If such cost exceeds the unpaid balance, the Design-Builder shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.
- 13.2.2.3 In the event the employment of the Design-Builder is terminated by the Owner for cause pursuant to Sub-Article 13.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Sub-Article 13.2.1 and the provisions of Sub-Article 13.2.1 shall apply.

ARTICLE 14. INSURANCE

- 14.1 The Design-Builder shall not commence work under this Agreement until it has obtained all insurance required under this article and such insurance has been approved by the Owner. All insurance policies shall be issued by companies authorized to do business in the State of Florida, and must possess a minimum current rating of A-, Class VIII in the Best's Key Rating Guide. The Design-Builder shall furnish proof of Insurance to the Owner prior to the commencement of operations. The Certificate(s) shall clearly indicate the Design-Builder has obtained insurance of the type, amount, and classification as required by contract and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the Owner. Certificates shall specifically include the Owner as Additional Insured for all lines of coverage except Workers' Compensation and Professional Liability. A copy of the endorsement must accompany the certificate. A brief description of operations referencing the Bid Number, Contract Title, Location, and/or Agreement/Resolution Number shall also be listed as a description on the certificate. Compliance with the foregoing requirements shall not relieve the Design-Builder of its liability and obligations under this Agreement. Certificate Holder Address:

St. Johns Owner, a political subdivision of the State of Florida
500 San Sebastian View
St. Augustine, FL 32084

14.2 Insurance Coverage Requirements

- 14.2.1 The Design-Builder shall maintain during the life of this Agreement, Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate, to protect the Design Build Firm from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the Design-Builder or by anyone directly employed by or contracting with the Design-Builder.
- 14.2.2 The Design-Builder shall maintain during the life of the contract, Professional Liability or Errors and Omissions Insurance with minimum limits of \$1,000,000, if applicable.
- 14.2.3 The Design-Builder shall maintain during the life of this Agreement, Comprehensive Automobile Liability Insurance with minimum limits of \$2,000,000 combined single limit for bodily injury and property damage liability to protect the Design-Builder from claims for damages for bodily injury, including the ownership, use, or maintenance of owned and non-owned automobiles, including rented/hired automobiles whether such operations be by the Design-Builder or by anyone directly or indirectly employed by the Design-Builder.
- 14.2.4 The Design-Builder shall maintain Umbrella or Excess Liability Insurance covering workers compensation, commercial general liability and business auto liability with minimum limits of liability of \$1,000,000.
- 14.2.5 The Design-Builder shall maintain during the life of this Agreement, adequate Workers' Compensation Insurance in at least such amounts as are required by the law.

14.2.6 The Design-Builder shall purchase and maintain Builders Risk insurance, property insurance written on an "all risk" policy form including coverage for Earthquake, Flood, Windstorm, Debris Removal, Hot and Cold Testing in the amount of the initial contract sum, plus the value of subsequent contract modification and cost of material supplied or installed by others, comprising total value for the entire project at the site on replacement cost basis. The named insured should include the Owner, Design-Builder and Subcontractors. The policy should waive any co-insurance penalties. Covered Property to include Permanent Works: Materials, supplies, equipment, machinery and property of others, if the insured is contractually responsible and the value is included in the total project, Temporary Work: scaffolding, form work, fences, shoring, falsework, temporary buildings, Offsite Locations , Offsite Storage and Transit.

The Contractor shall be responsible for the deductible. Such property insurance shall be maintained until final payment has been made. If the policy is terminated for any reason, notice should be provided to the owner within a minimum of thirty days by the carrier. The Owner, contractors and subcontractors waive their rights of subrogation against one another.

In the event of unusual circumstances, the Owner Administrator of his designee may adjust these insurance requirements.

14.2.7 Special Requirements - Prior to execution of this Agreement, a certificate of insurance will be provided that shall provide for the following:

- a. St. Johns Owner will be named as additional insured on all policies except Workers' Compensation.
- b. St. Johns Owner will be given thirty (30) days' notice prior to cancellation or modification of any stipulated insurance.
- c. It is the responsibility of the Design-Builder to insure that all Subcontractors comply with all insurance requirements.
- d. These are minimum requirements which are subject to modification in response to high hazard operations.

14.2.8 Certificate of Insurance

The Design-Builder shall furnish one copy of each Certificate of Insurance herein required for each copy of the Agreement which shall specifically set forth evidence of all coverage required by paragraphs 14.1 and 14.2 naming the Owner as additionally insured. The Design-Builder shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.

ARTICLE 15. EQUAL EMPLOYMENT OPPORTUNITY

15.1 Design-Builder's Employment Opportunity

15.1.1 The Design-Builder and all Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or age. The Design-Builder shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, national origin or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertisement, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

15.1.2 The Design-Builder and all Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

ARTICLE 16. APPRENTICESHIP LAW REQUIREMENTS

16.1 Apprenticeship Law (Chapter 446, Florida Statutes)

- 16.1.1 The Design-Builder shall make a diligent effort to hire for Performance of the Contract a number of apprentices in each occupation which bears to the average number of journeyman in that occupation to be employed in the performance of the Contract, the ratio of at least one apprentice or trainee to every five journeymen.
- 16.1.2 The Design-Builder shall, when feasible and except when the number of apprentices or trainees to be hired is fewer than four, assure that 25 percent of such apprentices or trainees are in their first year of training. Feasibility here involves a consideration of the availability of training opportunities for first year apprentices or trainees, the hazardous nature of the work for beginning workers, and excessive unemployment of apprentices or trainees in their second or subsequent years of training.
- 16.1.3 The Design-Builder, during the performance of the Contract, shall make diligent efforts to employ the number of apprentices or trainees necessary to meet requirements of Sub-Articles a. and b. However, on-the-job-training programs shall only be established in non-apprenticeable trades or occupations to meet the requirements of this section.
- 16.1.4 The Design-Builder agrees to return records of employment, by trade, of the number of apprentices or trainees, the number of apprentices or trainees by first year of training, and the number of journeymen and the wages paid, and hours of work, of such persons on a form as prescribed by the Bureau of Apprenticeship of the Division of Labor at three month intervals. Submission of duplicate copies of forms submitted to the United States Department of Labor shall be sufficient compliance with the provisions of the section.
- 16.1.5 The Design-Builder agrees to supply the Bureau of Apprenticeship of the Division of Labor, at three months intervals, a statement describing steps taken toward making a diligent effort and containing a breakdown by craft or hours worked and wages paid for first year apprentices or trainees, other apprentices or trainees and journeymen.
- 16.1.6 The Design-Builder agrees to insert in any subcontract under this Agreement the requirements contained in this section. The term "Design-Builder" as used in such clauses and any Subcontract shall mean the Subcontractors.
- 16.1.7 Anything herein to the contrary notwithstanding, Design-Builder agrees to comply with all of the provisions of Florida Statutes 446 and all regulations prescribed by the Bureau of Apprenticeship of the Division of Labor.

ARTICLE 17. PUBLIC RECORDS

- 17.1 The access to, cost of reproduction, disclosure, non-disclosure and exemption of records, data, documents, and/or materials associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes). Access to such public records may not be blocked, thwarted, or hindered by placing the public records in the possession of a third party, or an unaffiliated party.
- 17.2 As a condition of entering into this Agreement, and to ensure compliance, especially as it relates to any applicable law, rule, or regulation, the Design-Builder authorizes the Owner to examine, review, inspect, and/or audit the books and records, in order to determine whether compliance has been achieved with respect to the terms, conditions, provisions, rights, and responsibilities noted in this Agreement. It is specifically noted that (insert name of party) is under no duty to provide access to documentation not related to this Agreement, and/or is otherwise protected by Local, State, or Federal law.

- 17.3 In accordance with Florida law, to the extent that Contractor's performance under this Agreement constitutes an act on behalf of the Owner, the Contractor shall provide access to all public records made or received by Contractor in conjunction with this Agreement. Specifically, if Contractor is expressly authorized, and acts on behalf of the Owner under this Agreement, Contractor shall:
- (1) keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the services described herein;
 - (2) provide the public with access to public records related to this Agreement on the same terms and conditions that the Owner would provide the records, and at a cost that does not exceed the costs provided in Chapter 119, Florida States, or as otherwise provided by applicable law;
 - (3) ensure that public records related to this Agreement that are exempt or confidential and exempt from public disclosure are not disclosed except as authorized by applicable law; and
 - (4) meet all requirements for retaining public records, and transfer at Contractor's sole cost and expense, all public records in the possession of Contractor upon termination of this Agreement. Contractor shall destroy any duplicate records that are exempt or confidential and exempt from public disclosure requirements in accordance with applicable State and Federal provisions. Any public records stored electronically must be provided to the Owner in a format that is compatible with information technology systems maintained by the Owner.
- 17.4 Failure by Contractor to grant such public access shall be grounds for immediate, unilateral termination of this Agreement by the Owner. Contractor shall promptly provide the Owner notice of any request to inspect or copy public records related to this Agreement in Contractor's possession and shall promptly provide the Owner a copy of Contractor's response to each such request.

ARTICLE 18 MISCELLANEOUS

- 18.1 **Governing Law/Venue.** This Agreement shall be governed and construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be St. Johns Owner, Florida.
- 18.2 **Successors and Assigns.** The Owner and Design-Builder bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Agreement. The Design-Builder shall not assign this Agreement without written consent of the Owner.
- 18.3 **Safety of Persons and Property.** When existing utility lines shown on the Drawings are to be removed or relocated, the Design-Builder shall notify the Engineer in ample time for taking measures for prevention of the interruption of any required services prior to the beginning of operations. In the event that the Design-Builder damages any existing utility line not shown on the Drawings, the location of which is not known to the Design-Builder, report thereof shall be made immediately to the Engineer.
- 18.5 **Locations of existing utility lines shown on the Drawings are based on best information available to the Engineer, but shall not be considered exact either as to location or number of such lines. To the extent that a Design-Builder knows, or is aware of one or more utility lines not shown on the Drawings, the Design-Builder shall notify the Engineer, so that such utility lines may be added to the Drawings.**
- 18.6 **Design-Builder shall protect utility lines constructed under terms of the agreement and those discovered or shown on Drawings to be existing. Damage occurring to utility lines due to Design-Builder's operations shall be repaired at no cost to the Owner.**

- 18.7 Unless exempted or excluded by Federal law, or exempted or excluded by one or more applicable provisions State law (including an applicable provision of the Florida Public Records Law (Chapter 119, Florida Statutes, as revised from time-to-time), then this Agreement, and any attached and incorporated Exhibits and/or Attachments shall be considered public records and subject to disclosure.
- 18.8 To the extent necessary to satisfactorily perform and complete the terms, provisions, conditions, and obligations set forth in this Agreement, the Design-Builder shall adhere to, and comply with all applicable Federal, State, and local laws, rules, and regulations.
- 18.9 If any word, phrase, sentence, part, subsection, section, or other portion of this Contract, or any application thereof, to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force, and effect.
- 18.10 Authority to Execute. Each party covenants to the other party that it has the lawful authority to enter into this Agreement, and has authorized the execution of this Agreement by the undersigned representative.
- 18.11 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Contract.

Misc XX-XX; Project Name

OWNER:

DESIGN-BUILDER:

St. Johns Owner, FL

Authorized Representative Signature

Authorized Representative Signature

Printed Name & Title

Printed Name & Title

Date of Signature

Date of Signature

ATTEST:

St. Johns Owner, FL Clerk of Court

Deputy Clerk Signature

Date of Signature

LEGALLY SUFFICIENT:

Senior. Assistant Owner Attorney

Date of Signature