

RESOLUTION NO. 2020 - 253

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO AWARD RFQ NO. 20-53 AND TO EXECUTE AN AGREEMENT FOR DESIGN-BUILD SERVICES FOR CDBG-DR PROJECT – HASTINGS PHASE III WWTP IMPROVEMENTS.**

**RECITALS**

**WHEREAS**, the County desires to enter into contract with Wharton-Smith, Inc. to provide Design-Build services for the performance of improvements to the Hastings Wastewater Treatment Plant (WWTP) located at 900 N. Main Street, Hastings, FL 32145, in accordance with RFQ No. 20-53; and

**WHEREAS**, the scope of the services will be to provide any and all labor, materials, equipment, transportation, and supervision necessary for providing Design-Build Services for CDBG-DR Project – Hastings Phase III WWTP Improvements, in accordance with RFQ No. 20-53; and

**WHEREAS**, through the County’s formal RFQ process, Wharton-Smith, Inc. was selected as the highest ranked respondent to enter into contract with the County to perform the work referenced above; and

**WHEREAS**, the County has reviewed the terms, provisions, conditions and requirements of the proposed contract (attached hereto, an incorporated herein) and finds that entering into contract to complete the work services serves a public purpose.

**WHEREAS**, the contract will be finalized after negotiations but will be in substantial conformance with the attached draft contract.

**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 award RFQ 20-53 to Wharton-Smith, Inc. and to conduct negotiations to provide the services set forth therein.

Section 3. Upon successful negotiations, the County Administrator, or designee, is further authorized to execute agreements in substantially the same form and format as the attached draft on behalf of the County to provide the scope of services as specifically provided in RFQ 20-53.

Section 4. 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 7<sup>th</sup> day of July, 2020.

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

By: [Signature]  
Leb S. Smith, Chair

**ATTEST: ST. JOHNS COUNTY, FL  
CLERK OF COURT: Brandon Patty, Clerk**

By: Ram Halterman  
Deputy Clerk

**RENDITION DATE** 7/9/20





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# STANDARD FORM OF PRELIMINARY AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

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**Document No. 520**  
Second Edition, 2010  
© Design-Build Institute of America  
Washington, DC



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## Standard Form of Preliminary Agreement Between Owner and Design-Builder

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This **AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, in the year of 2020, by and between the following parties, for services in connection with the Project identified below.

**OWNER:**

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

**DESIGN-BUILDER:**

**PROJECT:**

Design Build Services for Hastings Phase III WWTP Improvements.

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

## Article 1

### **General**

**1.1 Duty to Cooperate.** Owner and Design-Builder commit at all times to cooperate with each other, and proceed on the basis of good faith to permit each party to realize the benefits afforded under this Agreement.

**1.2 Definitions.** Terms, words and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract"), as modified by the parties.

**1.3 Enumeration of Contract Documents.** The term "Contract Documents" as used herein shall include:

- a. Modifications (i.e., duly executed amendments, modifications and change orders);
- b. DBIA Document No. 530, Standard Form of Agreement Between Owner and Design-Builder, Cost Plus Fee with an Option for a Guaranteed Maximum Price;
- c. DBIA Document No. 520, Standard Form of Preliminary Agreement Between Owner and Design-Builder (2010 Edition), as modified by the parties;
- d. DBIA Document No: 535; Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition), as modified by the parties;
- e. Preliminary Design and Pre-Construction Services Proposal dated \_\_\_\_\_;
- f. St. Johns County RFQ No: 20-53 Documents and all issued Addenda, with those of later date having precedence over those of earlier date;
- g. Insurance Certificate(s) evidencing all required coverage;
- h. Federally Funded Community Development Block Grant Disaster Recovery (CDBG-DR) Program Subgrant Agreement between the State of Florida, Department of Economic Opportunity (DEO), and St. Johns County;
- i. Community Development Block Grant – Disaster Recovery (CDBG-DR) Required Contract Clauses; and
- j. Other documents specifically enumerated in the Agreements as part of the Contract Documents.

1.3.1 Any document not identified above shall not be enforceable as a Contract Document, and does not form part of this Agreement. In the event of conflicts or discrepancies, the Contract Documents shall be interpreted in the order of precedence as listed above.

## Article 2

### **Design-Builder's Services and Responsibilities**

**2.1 Design Services.** Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering and other design professional services, required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

**2.2 Preliminary Services.**

**2.2.1** Owner shall provide Design-Builder with Owner's Project Criteria, attached as Exhibit B to the Preliminary Design and Pre-Construction Services Proposal, describing Owner's program requirements and objectives for the Project. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications and other technical materials and requirements prepared by or for Owner.

**2.2.2** If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria, with such service deemed to be an Additional Service pursuant to Section 2.7 hereof. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.

**2.2.3** Design-Builder will submit a Preliminary Design and Pre-Construction Services Proposal for owner approval prior to initiating pre-construction services associated with preparation and submittal of the GMP Package. The proposal will describe the design and pre-construction services scope and cost required to complete the GMP Package submittal. A copy of the submitted Preliminary Design and Pre-Construction Services Proposal dated \_\_\_\_\_ is attached hereto and incorporated into this Agreement.

**2.3 Schematic Design Documents.** Design-Builder shall prepare Schematic Design Documents based on Owner's Project Criteria, as may be revised in accordance with Section 2.2.2 hereof. The Schematic Design Documents shall include design criteria, drawings, diagrams and specifications setting forth the requirements of the Project. The parties shall meet to discuss the Schematic Design Documents and agree upon what revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions.

**2.4 Proposal.** Based on Owner's Project Criteria, the Schematic Design Documents, as each may be revised pursuant to Sections 2.2.2 and 2.3 above, and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "GMP Proposal"), no later than November 30, 2019 which shall include the following unless the parties mutually agree otherwise:

**2.4.1** a proposed contract price for the design and construction of the Project, which price shall be in the form of a Guaranteed Maximum Price ("GMP");

**2.4.2** a schedule and date of Substantial Completion of the Project upon which the Contract Price for the Project is based;

**2.4.3** all other information necessary for the parties to enter into DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition), with the accompanying DBIA Document No. 535, *General Conditions of Contract Between Owner and Builder*,; and

**2.4.4** the time limit for acceptance of the GMP Proposal.

**2.5 Review of Proposal.** Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If Design-Builder finds the revisions acceptable, Design-Builder shall, upon receipt of Owner's notice, adjust the Proposal.

**2.6 Completion of This Agreement.** Design-Builder's services under this Agreement shall be deemed completed upon meeting with Owner to discuss the Proposal and making those revisions to the Proposal, if any, Design-Builder finds acceptable.

**2.7 Additional Services.** Design-Builder shall perform the Additional Services set forth in a separate exhibit to this Agreement. The cost for such services shall be as mutually agreed upon by Owner and Design-

Builder, with the Contract Price for this Agreement, as set forth in Section 6.1 hereof, being adjusted accordingly.

## Article 3

### **Owner's Services and Responsibilities**

**3.1 Timely Performance.** Owner shall throughout the performance of this Agreement cooperate with Design-Builder. Owner shall perform its responsibilities, obligations and services, including its reviews and approvals of Design-Builder's submissions, in a timely manner so as not to delay or interfere with Design-Builder's performance of its obligations under this Agreement.

**3.2 Owner's Project Criteria.** Owner shall provide Design-Builder with Owner's Project Criteria. If Owner desires that Design-Builder assist Owner in developing such criteria as an Additional Service under Section 2.7 hereof, Owner shall provide Design-Builder with its objectives, limitations and other relevant information regarding the Project.

**3.3 Owner Provided Information.** Owner shall provide, at its own cost and expense, for Design-Builder's information and use, the following, all of which Design-Builder is entitled to rely upon in performing its obligations hereunder:

**3.3.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

**3.3.2** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use or necessary to permit the proper design and construction of the Project;

**3.3.3** A legal description of the Site;

**3.3.4** To the extent available, as-built and record drawings of any existing structures at the Site; and

**3.3.5** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including, but not limited to, Hazardous Conditions, in existence at the Site.

## Article 4

### **Ownership of Work Product**

**4.1 Ownership of the Work Product.** The Design-Builder shall deliver to the Owner for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials, including but not limited to, drawings, maps, sketches, and other data developed pursuant to the Contract Documents or purchased at the Owner's expense in completion of the Project, hereinafter called "Work Product."

All written and oral information not in the public domain, or not previously known, and all information and data obtained, developed, or supplied by the Owner, or at its expense, shall be kept confidential by the Design-Builder and shall not be disclosed to any other party, directly or indirectly, without the Owner's prior written consent, unless required by applicable law. All Work Product shall be and remains the Owner's property and may be reproduced and reused at the sole discretion of the Owner. In the event that the Owner modifies or makes use the Work Product, or any portions thereof, on a project or projects not described in the Contract Documents without the Design-Builder's express written consent, such use shall be at the Owner's sole discretion, liability and risk of the County. To the fullest extent permitted by law, and subject to the limitations of liability set forth in Section 768.28, Florida Statutes, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them,

and their officers, directors, and employees, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the Owner's use before completion of the Work Product or if the Owner modifies or reuses the Work Product outside of the scope of work described in the Contract Documents, without the Design-Builder's involvement or consent.

Owner shall not retain any ownership interest in preexisting work conceived or developed by Design-Builder prior to its performance of the Agreement, or any work that is conceived or developed, but not unique to the Project as described in the Contract Documents. Any work product that owner does not receive ownership interest in, it shall receive a nonexclusive license for the purposes of constructing, using, maintaining, altering, and adding to the Project.

All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to, any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of the Contract Documents and the consummation of the transactions contemplated hereby.

**4.2 Owner's Limited Use.** If Owner fails to enter into an agreement on this Project with Design-Builder to complete the design and construction of the Project and Owner proceeds to design and construct the Project through its employees, agents or third parties, then Design-Builder, upon payment in full of the amounts due Design-Builder under this Agreement, transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on the following:

**4.2.1** Use of the Work Product is at Owner's sole risk without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"). To the extent permissible by law, and subject to the limitations of liability set forth in Section 768.28, Florida Statutes, Owner shall indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including reasonable attorneys' fees, arising out of or resulting from the use of the Work Product.

## **Article 5**

### **Contract Time**

**5.1 Commencement Date.** Design-Builder shall commence performance of the services set forth in this Agreement within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing. Design-Builder shall complete such services no later than ninety (90) calendar days after the Date of Commencement.

**5.2 Interim Dates.** Interim milestone dates, if any, of identified portions of the services set forth in this Agreement shall be achieved as described in a separate exhibit to this Agreement. Such dates entitled, "Owner Key Milestone Dates" are attached as Exhibit A of the Preliminary Services Proposal, and incorporated herein.

## **Article 6**

### **Contract Price**

**6.1 Contract Price.** The Contract Price for this Agreement is \$ \_\_\_\_\_, as detailed in the Preliminary Design and Pre-Construction Services Proposal dated \_\_\_\_\_, attached hereto and incorporated herein.



**6.2 Scope of Contract Price.** The Contract Price shall be the full compensation due Design-Builder for the performance of all services set forth in this Agreement, and shall be deemed to include all the sales, use, consumer and other taxes mandated by applicable Legal Requirements. The Contract Price may only be adjusted to reflect any Additional Services agreed upon by the parties through issuance of an Amendment to this Agreement which must be agreed to and executed by both parties.

## Article 7

### **Procedure for Payment**

**7.1 Payment.** Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder:

#### 7.1.1 Compensation/Billing/Invoices

- a. The Design-Builder's compensation is based upon the Design-Builder's adherence to the requirements provided in the Contract Documents. As such, the Design-Builder's compensation is dependent upon satisfactory completion and delivery of all Work Product and deliverables according to the prescribed schedule as provided in the Contract Documents.
- b. The Design-Builder shall bill Owner for services satisfactorily performed, and materials satisfactorily delivered on a monthly basis. The signature of the Design-Builder's authorized representative on the submitted invoice shall constitute the Design-Builder's certification to Owner that:
  - i. Design-Builder has billed the Owner for all services rendered by it and any of its consultants or sub-consultants through the date of the invoice;
  - ii. As of the date of the invoice, no other outstanding amounts are due from the Owner to the Design-Builder for services rendered except as noted in the invoice;
  - iii. The reimbursable expenses, if any, have been reasonably incurred; and
  - iv. The amount requested is currently due and owing.
- c. Invoices submitted by the Design-Builder shall be submitted with the Owner's Monthly Invoicing Form 1551, and shall include a detailed written report of work accomplished in connection with the Contract Documents. The County may return any invoice submitted by the Design-Builder, to request additional documentation or information in order to clarify or correct any information contained in the invoice. Under such circumstances, the timeframe for Owner's payment will be extended to the extent necessary to clarify or correct of the invoice.
- d. The Design-Builder's acceptance of Owner's payment of any invoiced amount shall release the County from any claim by the Design-Builder, or by the Design-Builder's consultants or sub-consultants, for work performed but not invoiced during the time period indicated on the invoice for which payment was issued.
- e. Unless otherwise notified, invoices must be delivered to:

St. Johns County Construction Services Department  
2750 Industry Center Road  
St. Augustine, FL 32084
- f. **FINAL INVOICE:** In order for the Owner and the Design-Builder to reconcile/close their books and records, the Design-Builder shall clearly indicate "Final Invoice" on the Design-Builder's final invoice to the Owner relative to the work associated with the Standard Form of Preliminary Agreement Between Owner and Design-Builder. Such indication establishes that all services have been satisfactorily performed and that all costs have been invoiced to the Owner and that there is no further work to be performed under the Agreement.

**7.2 Interest.** Payments due and unpaid by Owner to Design-Builder shall bear interest commencing thirty (30) days after payment is due at the rate of one and one half percent (1 1/2%).

## **Article 8**

### **Electronic Data**

#### **8.1 Electronic Data.**

**8.1.1** The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

#### **8.2 Transmission of Electronic Data.**

**8.2.1** Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

**8.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

**8.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

#### **8.3 Electronic Data Protocol.**

**8.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 8.3.

**8.3.2** Electronic Data will be transmitted in the format agreed upon in Section 8.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

**8.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information if such information changes prior to Final Completion.

**8.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data

via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

## Article 9

### Other Provisions

**9.1 Initial Dispute Resolution.** The parties agree that any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof that cannot be resolved through discussions by the parties shall be submitted to non-binding mediation administered by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to the Construction Industry Mediation Rules then in effect.

**9.2 Confidentiality.** In accordance with the laws of the State of Florida, as applicable, Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies it as either confidential or proprietary at the time the information is provided to the receiving party; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the services set forth in this Agreement.

**9.3 Assignment.** Neither Design-Builder nor Owner shall without the prior written consent of the other party assign, transfer, or sublet any portion or part of its obligations under this Agreement.

**9.4 Governing Law/Venue.** This Agreement shall be governed by the laws of the State of Florida, without giving effect to its conflict of law principles. Venue for any claim arising from this Agreement shall be in a state or federal court serving St. Johns County, FL.

**9.5 Severability.** If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

**9.6 Amendments.** This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

**9.7 Entire Agreement.** The Contract Documents enumerated in Article 1.3 herein forms the entire agreement and understanding between Owner and Design-Builder, supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matters.

**9.8 Other Provisions.** Other provisions, if any, are as follows:

**9.9 Truth-In-Negotiation Certificate.** The signing of this Agreement by the Design-Builder shall act as the execution of a truth-in-negotiation certificate certifying that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current as of the date of this Agreement.

The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the County determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year

following the end of the Agreement.

**9.10 Arrears.** The Design-Builder shall not pledge the Owner's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The Design-Builder warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

**9.11 Federal and State Tax.** In accordance with Local, State, and Federal law, the Owner is exempt from the payment of Sales and Use Taxes. The Owner shall provide a tax exemption certificate to the Design-Builder upon request. The Design-Builder shall not be exempt from the payment of any or all applicable taxes in its performance under this Agreement. It is expressly understood by the Owner and by the Design-Builder that the Design-Builder shall not be authorized to use the Owner's Tax Exemption status in any manner.

The Design-Builder shall be solely responsible for the payment and accounting of any and all applicable taxes and/or withholdings including but not limited to Social Security payroll taxes (FICA), associated with or stemming from Design-Builder's performance under this Agreement.

**9.12 INTENTIONALLY OMITTED.**

**9.13 Availability of Funds.** The Owner's obligations under this Agreement are contingent upon the lawful appropriation of sufficient funds, for that purpose, by the St. Johns County Board of Commissioners ("Board"). Pursuant to the requirements of Section 129.07, Florida Statutes, payment made under this Agreement shall not exceed the amount appropriate in the Owner's budget for such purpose in that fiscal year. Nothing in this Agreement shall create any obligation on the part of the Board to appropriate such funds for the payment of services provided under this Agreement during any given County fiscal year. Moreover, it is expressly noted that the Design-Builder cannot demand that the Owner provide any such funds in any given County Fiscal Year.

**9.14 Indemnification.** The Design-Builder shall indemnify and hold harmless DEO, the Owner, and its officers, and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the Design-Builder in the performance of the Contract.

**9.15 Insurance.** The Design-Builder shall not commence work under the awarded Agreement until he/she has obtained all insurance required under this section and such insurance has been approved by the Owner. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. 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. The Owner shall specifically be named as Additional Insured for all lines of coverage except Workers' Compensation and Professional Liability. A copy of the endorsement must be provided along with the Certificate of Insurance.

Certificate Holder Address: St. Johns Owner, FL  
500 San Sebastian View  
St. Augustine, FL 32084

The Design-Builder shall maintain throughout the life of the awarded Agreement, Comprehensive General Liability Insurance with minimum limits of liability of \$5,000,000 per occurrence, \$10,000,000 aggregate, to protect the awarded Design-Builder from claims for bodily injury, including wrongful death, as well as from claims of property damage which may arise from any operations under the awarded Agreement, whether such operations be by the Design-Builder, or anyone directly employed by or contracting with the Design-Builder.

The Design-Builder shall maintain during the life of the contract, Professional Liability or Errors and Omissions Insurance with minimum limits of \$5,000,000, if applicable.

The Design-Builder shall maintain throughout the life of the awarded 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.

The Design-Builder shall maintain throughout the life of the awarded Agreement, Umbrella or Excess Liability Insurance covering workers' compensation, commercial general liability and business auto liability with minimum limits of liability of \$1,000,000.

The Design-Builder shall maintain throughout the life of the awarded Agreement, adequate Workers' Compensation Insurance in at least such amounts as is required by the law for all of its employees per Florida Statute 440.02.

The Design-Builder shall maintain throughout the life of the awarded Agreement, 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 modifications 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 shall include the Owner, Design-Builder and Sub-contractors. The policy shall 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 Design-Builder shall be responsible for the deductible. Such property insurance shall be maintained until final acceptance and payment has been made. If the policy is terminated for any reason, notice shall be provided to the Owner within a minimum of thirty (30) days by the carrier. The Owner, Design-Builder and any approved sub-contractors waive their rights of subrogation against one another.

The Owner reserves the right to purchase a Builder's Risk policy and remove the cost from the awarded contract, if it serves the best interest of the Owner to do so.

In the event of unusual circumstances, the St. Johns County Administrator, or his designee may adjust these insurance requirements.

**9.16 No Third Party Beneficiaries.** It is expressly understood by the Owner, and the Design-Builder, and this Agreement explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

**9.17 Remedies.** No remedy herein conferred upon any party is intended to be exclusive, and any/all remedies shall be cumulative and shall be in addition to any/all other remedies given hereunder or hereafter existing by law or in equity or by statute or otherwise. No single or partial exercise by any party or any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees.

**9.18 Conflict of Interest.** The Design-Builder represents that it presently has no interest and shall acquire no interest, either directly or indirectly, which would conflict in any manner with the performance of services required hereunder. The Design-Builder further represents that no person having any interest shall be employed for said performance.

The Design-Builder shall promptly notify the Owner, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance, which may influence or appear to influence the Design-Builder's judgment or quality of services being provided hereunder. Such

written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Design-Builder may undertake and request an opinion of the Owner, whether such association, interest, or circumstance constitutes a conflict of interest if entered into by the Design-Builder.

The Owner agrees to notify the Design-Builder of its opinion by certified mail within thirty (30) days of receipt of notification by the Design-Builder. If, in the opinion of the Owner, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Design-Builder, the Owner shall so state in the notification and the Design-Builder shall, at his/her option enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the Owner by the Design-Builder under the terms of this Agreement.

**9.19 Excusable Delays.** The Design-Builder shall not be considered in default by reason of any delay in performance if such delay arises out of causes reasonably beyond the Design-Builder's control and without its fault or negligence. Such cases may include, but are not limited to: acts of God; the Owner's ommissive and commissive failures; natural or public health emergencies; freight embargoes; and severe weather conditions.

If delay is caused by the failure of the Design-Builder's subcontractor(s) to perform or make progress, and if such delay arises out of causes reasonably beyond the control of the Design-Builder and its subcontractor(s) and is without the fault or negligence of either of them, the Consultant shall not be deemed to be in default.

In the event events reasonably beyond the Design-Builder's control and without its fault or negligence cause a delay in the Design-Builder's performance of the project, Design-Builder shall submit documentation of such delay to Owner within 7 days of the event causing the delay. Upon the Design-Builder's request, the Owner shall consider the facts and extent of any delay in performing the work and, if the Design-Builder's failure to perform was without its fault or negligence, the Contract Schedule and/or any other affected provision of this Agreement shall be revised accordingly; subject to the Owner's right to change, terminate, or stop any or all of the Work at any time.

**9.20 Independent Relationship.** The Design-Builder is, and shall be, in the performance of all work services and activities under this Agreement, an independent consultant, and not an employee, agent, or servant of the Owner. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times and in all places be subject to the Design-Builder's sole direction, supervision, and control.

The Design-Builder shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Design-Builder's relationship and the relationship of its employees to the Owner shall be that of an independent consultant and not as employees or agents of the Owner. The Design-Builder does not have the power or authority to bind the Owner in any promise, agreement or representation other than specifically provided for in this Agreement.

**9.21 Contingent Fees.** Pursuant to Section 287.055(6), Florida Statutes, the Design-Builder warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Design-Builder to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Design-Builder, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

Violation of this Article shall be grounds for termination of this Agreement. If this Agreement is terminated for violation of this Article, the Owner may deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or other consideration.

**9.22 Access and Audits.** The Design-Builder shall maintain adequate records to justify all charges, expenses and costs incurred in performing the work for at least six (6) years after completion of the project. The Owner shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Owner's cost, upon five (5) consecutive

calendar days' written notice.

**9.23 Nondiscrimination.** The Design-Builder warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, age, or national origin.

**9.24 E-Verify.** The Design-Builder must utilize the US Department of Homeland Security's E-Verify System to verify employment eligibility of all personnel performing any work on the project. Additionally, the Design-Builder must expressly require any sub-contractors or sub-consultants performing work or providing services pursuant to the project shall likewise utilize the US Department of Homeland Security's E-Verify System to verify employment eligibility of all employees hired by the sub-contractor or sub-consultant while working on the project.

**9.25 Notices.** All required notices related to the project, under the Contract Documents, shall be sent, by certified mail, return receipt requested, with a copy via email to:

Owner: St. Johns County, FL  
Purchasing Division  
Attn: **Purchasing Manager**  
500 San Sebastian View  
St. Augustine, FL 32084  
(904) 209-0150

Design-Builder:

**9.26 Public Records.**

- a. The cost of reproduction, access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with the Contract Documents shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State and Federal provisions. Access to such public records, may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or unaffiliated party.
- b. In accordance with Florida Law, to the extent that the Design-Builder's performance under the Contract Documents constitutes an act on behalf of the Owner, the Design-Builder shall comply with all requirements of Florida's public records law. Specifically, if the Design-Builder is expressly authorized, and acts on behalf of the Owner under the Contract Documents, the Design-Builder shall:
  - i. Keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the work;
  - ii. Upon request from the Owner's custodian of public records, provide the Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
  - iii. Ensure that public records related to the project, that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable law for the duration of the project and following completion of the project if the Design-Builder does not transfer the records to the Owner; and
  - iv. Upon completion of the project, transfer, at no cost, to the Owner, all public records in possession of the Design-Builder or keep and maintain public records required by the Owner related to the performance of the work.
- c. If the Design-Builder transfers all public records to the Owner upon completion of the project, the Design-Builder shall destroy any duplicate public records that are exempt or confidential and exempt

from public records disclosure requirements. If the Design-Builder keeps and maintains public records upon completion of the project, the Design-Builder shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Owner, upon request from the Owner's custodian of public records, in a format that is compatible with the Owner's information technology systems.

- d. Failure by the Design-Builder to comply with the requirements of this section shall be grounds for immediate, unilateral termination of the Contract by the Owner.

**IF THE DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 500 SAN SEBASTIAN VIEW, ST. AUGUSTINE, FL 32084, (904) 209-0805, [publicrecords@sjcfl.us](mailto:publicrecords@sjcfl.us).**

**9.27 Use of Owner Logo.** Pursuant to, and consistent with St. Johns County Ordinance 92-2 and St. Johns County Administrative Policy 101.3, the Design-Builder may not manufacture, use, display, or otherwise use any facsimile or reproduction of the Owner's Seal/Logo without express written approval of the Board.

**9.28 Compliance with Applicable Laws.** The Design-Builder shall comply with all applicable federal, state, and local laws, rules, regulations, orders, and policies in its performance under this Agreement.

**9.29 Authority to Execute.** Each party represents that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.



In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

**OWNER:**

**DESIGN-BUILDER:**

\_\_\_\_\_  
*(Name of Owner)*

\_\_\_\_\_  
*(Name of Design-Builder)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Title)*

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

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

**Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.**



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**STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER -  
COST PLUS FEE WITH AN OPTION FOR A GUARANTEED MAXIMUM PRICE**

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**Document No. 530**  
Second Edition 2010  
© Design-Build Institute of America  
Washington, DC

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**DRAFT**



**Standard Form of Agreement  
Between  
Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum  
Price**

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This AGREEMENT is made as of the \_\_\_\_ day of in the year of 2020, by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

St. Johns County, FL, a political subdivision of the State of Florida  
500 San Sebastian View  
St. Augustine, FL 32084  
ATTN: Purchasing Manager

**DESIGN-BUILDER:**

**PROJECT:**

Design-Build Services for Hastings Phase III WWTP Improvements.

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

## **Article 1**

### **Scope of Work**

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

## **Article 2**

### **Contract Documents**

2.1 The Contract Documents are comprised of the following:

2.1.1 This Agreement, DBIA Document No: 530; Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price, as modified by the Parties, together with all exhibits, addenda, and amendments hereto executed by the Parties;

2.1.2 Any Change Orders issued pursuant to this Agreement and executed by the Parties, which shall be incorporated into and made part of the Contract Documents upon execution;

2.1.3 The GMP Exhibit referenced in Section 6.6.1.1 herein;

2.1.4 DBIA Document No: 520; Standard Form of Preliminary Agreement Between Owner and Design Builder, as modified by the Parties, together with all exhibits, addenda, amendments thereto, and change orders or other modifications executed by the Parties;

2.1.5 DBIA Document No: 535; Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition), as modified (herein after referred to as "General Conditions of Contract");

2.1.6 St. Johns Request for Qualifications (RFQ) No: 20-35 and all issued Addenda;

2.1.7 All Public Construction Bonds required in accordance with the Contract Documents;

2.1.8 All Insurance Certificates required in accordance with the Contract Documents;

2.1.9 Federally Funded Community Development Block Grant Disaster Recovery (CDBG-DR) Program Subgrant Agreement between the State of Florida, Department of Economic Opportunity (DEO), and St. Johns County (the Subgrant Agreement);

2.1.9 Community Development Block Grant – Disaster Recovery (CDBG-DR) Required Contract Clauses; and

2.1.10 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

Any document(s) not identified above shall not be considered enforceable as a Contract Document and does not form part of this Agreement. In interpreting the Contract and resolving any inconsistencies or ambiguities, the main body of this Agreement takes precedence and the remaining documents in the order listed above.

### Article 3

#### **Interpretation and Intent**

**3.1** Design-Builder and Owner, prior to execution of this Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents and the GMP Proposal, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to Owner's acceptance of the GMP Proposal, and subsequent execution of this Agreement.

**3.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the body of this Agreement takes precedence, and the remainder of the Contract Documents in the order in which they are listed in Section 2.1 of this Agreement.

**3.3** Terms, words and phrases used in the Contract Documents, including this Agreement, shall be defined as provided in the General Conditions of Contract.

**3.4** If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to a reasonable adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by inaccurate design specifications provided by Owner.

**3.5** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

### Article 4

#### **Ownership of Work Product**

**4.1 Work Product.** All written and oral information not in the public domain, or not previously known, and all information and data obtained, developed, or supplied by the Owner, or at its expense, shall be kept confidential by the Design-Builder and shall not be disclosed to any other party, directly or indirectly, without the Owner's prior written consent, unless required by applicable law. All Work Product shall be and remains the Owner's property and may be

reproduced and reused at the sole discretion of the Owner. In the event that the Owner modifies or makes use the Work Product, or any portions thereof, on a project or projects not described in the Contract Documents without the Design-Builder's express written consent, such use shall be at the Owner's sole discretion, liability and risk of the County. To the fullest extent permitted by law, and subject to the limitations of liability set forth in Section 768.28, Florida Statutes, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, and employees, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the Owner's use before completion of the Work Product or if the Owner modifies or reuses the Work Product outside of the scope of work described in the Contract Documents, without the Design-Builder's involvement or consent.

Owner shall not retain any ownership interest in preexisting work conceived or developed by Design-Builder prior to its performance of the Agreement, or any work that is conceived or developed, but not unique to the Project as described in the Contract Documents. Any work product that owner does not receive ownership interest in, it shall receive a nonexclusive license for the purposes of constructing, using, maintaining, altering, and adding to the Project.

All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to, any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of the Contract Documents and the consummation of the transactions contemplated hereby.

4.2 DELETED

4.3 DELETED

4.4 DELETED

4.5 **Owner's Indemnification for Use of Work Product.** If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, to the extent permissible by law, and subject to the limitations of liability set forth in Section 768.28, Florida Statutes, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including reasonable attorneys' fees, arising out of or resulting from Owner's use or alteration of the Work Product.

## Article 5

### **Contract Time**

5.1 **Date of Commencement.** The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the Parties mutually agree otherwise in writing.

5.2 **Substantial Completion and Final Completion.**

5.2.1 Substantial Completion of the entire Work shall be achieved by no later than \_\_\_\_\_ (\_\_\_\_\_) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date"). The Parties hereby expressly agree that the definition of "Substantial Completion" set forth in Section 1.2.18 of the General Conditions of Contract is hereby amended and modified to read as follows:

"Substantial Completion" is the date on which the Work, or a mutually agreed upon portion of the Work (as evidenced in writing), is sufficiently complete in accordance with the Contract Documents so that Owner may occupy and use the Project or a portion thereof for its intended purposes."

5.2.2 Final Completion of the Work shall be achieved by no later than forty five (45) calendar days following Owner's acceptance of Substantial Completion.

5.2.3 All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder further agrees that if Substantial Completion is not attained by or before the Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner \_\_\_\_\_ dollars (\$) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

Commented [RL1]: The amount of liquidated damages will be based on the total contract amount.

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are caused by, or related to, any delay.

Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement for failure to achieve the Contract Time(s) shall be five million five hundred thousand dollars (\$5,500,000.00).

5.6 DELETED

5.7 In addition to the Parties' consideration of a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to a reasonable adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Builder shall only be entitled to an increase in the Contract Price if said events exceed fifteen (15) cumulative days. Such additional compensation shall be limited to the direct costs and expenses Design-Builder can demonstrate it has reasonably and actually incurred as a result of such event.

## Article 6

### Contract Price

#### 6.1 Contract Price.



6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to the Cost of the Work (as defined in Section 6.3 hereof), subject to any GMP established in Section 6.6 hereof and any adjustments made in accordance with the General Conditions of Contract.

## 6.2 DELETED

6.3 **Cost of the Work.** The term Cost of the Work shall mean costs reasonably and actually incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

6.3.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in the GMP Proposal.

6.3.2 Wages or salaries of Design-Builder's supervisory and administrative personnel (inclusive of applicable employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, which are customarily paid by Design-Builder) engaged in the performance of the Work.

6.3.3 DELETED.

6.3.4 DELETED.

6.3.5 In accordance with Owner's Administrative Policy, the actual cost of travel and per diem for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

6.3.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

6.3.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained. \*Note: Owner should not be subject to additional costs for the repair or correction of nonconforming work performed by the Design-Builder. If Design-Builder must reperform or correct any work due to its noncompliance with the project requirements, those costs should be absorbed by the Design-Builder.

6.3.8 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

**6.3.9** Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

**6.3.10** Costs of removal of debris and waste from the Site.

**6.3.11** The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

**6.3.12** Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

**6.3.13** Premiums for insurance and bonds required by this Agreement or otherwise required in performance of the Work.

**6.3.14** All fuel and utility costs incurred in the performance of the Work.

**6.3.15** Applicable sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

**6.3.16** Reasonable legal costs, court costs and costs of mediation and arbitration incurred in the performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

**6.3.17** Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

**6.3.18** The reasonable cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

**6.3.19** DELETED.

**6.3.20** Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

**6.3.21** Accounting and data processing costs related to the Work.

**6.3.22** Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

**6.4** DELETED

**6.5 Non-Reimbursable Costs.**

**6.5.1** The following shall not be deemed as costs of the Work:

**6.5.1.1** Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.

**6.5.1.2** Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.

**6.5.1.3** The cost of Design-Builder's capital used in the performance of the Work.

**6.5.1.4** If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

**6.6 The Guaranteed Maximum Price ("GMP").**

**6.6.1 GMP Established Prior to Execution of this Agreement.**

**6.6.1.1** Design-Builder guarantees that the cost of the Work shall not exceed the GMP of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Documents used as a basis for the GMP shall be identified in an exhibit to this Agreement ("GMP Exhibit"). Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents.

**Article 7**

**Procedure for Payment**

**7.1 Progress Payments.**

**7.1.1** Design-Builder shall submit to Owner on the thirtieth (30) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

**7.1.2** Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

**7.1.3** If Design-Builder's Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

**7.2 DELETED**

**7.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

**7.4 Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of one and one half percent (1 1/2 %) per month until paid.

**7.5 Record Keeping and Finance Controls.** Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, and as may be provided in the Contract Documents. During the performance of the Work and for a period of six (6) years after the date DEO issues the final closeout (as defined in Rule 73C-23.0031, F.A.C.) of the CDBG award as provided in the Subgrant Agreement (Final Closeout), Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of six (6) years after Final Closeout. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

**Article 8**

**Termination for Convenience**

**8.1** Upon ten (10) days prior written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

**8.1.1** All Work executed and for proven loss, cost or expense in connection with the Work;

**8.1.2** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

**8.1.3** Overhead and profit in the amount of fifteen percent (15 %) on the sum of items 8.1.1 and 8.1.2 above.

**8.2 DELETED.**

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

## Article 9

### Representatives of the Parties

#### 9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Hunter S. Conrad  
County Administrator  
500 San Sebastian View  
St. Augustine, FL 32084  
Phone: (904) 209-0500

9.1.2 Owner designates the individual(s) listed below as its Owner's Representative, which individual(s) have the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

(1) For Project oversight:

Teri Pinson, P.E.,  
SJC Utilities Department  
1205 State Road 16  
St. Augustine, FL 32084

(2) For contractual issues:

Leigh Daniels, Assistant Purchasing Manager  
500 San Sebastian View  
St. Augustine, FL 32084  
Phone: (904) 209-0158

#### 9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: Identify individual's name, title, address and telephone numbers

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in

Section 2.1.1 of the General Conditions of Contract: (Identify individual's name, title, address and telephone numbers)

#### Article 10

#### **Bonds and Insurance**

**10.1 Insurance.** Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

**10.2 Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

**Performance Bond.**

**[Check one box only. If no box is checked, then no bond is required.]**

Required       Not Required

**Payment Bond.**

**[Check one box only. If no box is checked, then no bond is required.]**

Required       Not Required

**10.3** Each Bond shall set forth a penal sum in an amount not less than the Project Price. Each bond furnished by the Design-Builder shall incorporate by reference the terms of the Agreement as fully as though they were set forth verbatim in such bonds. Each bond shall provide that in the event the Project Price is adjusted by Change Order executed by the Design-Builder, the Design-Builder shall obtain either an amended bond or new bond that reflects the adjusted Project Price. Design-Builder shall provide such amended or new bond to the Owner within ten (10) days of the Change Order being approved to adjust the Project Price. Each bond furnished by the Design-Builder shall be in a form and format suitable to the Owner and shall be executed by a Surety, or Sureties, reasonably suitable to Owner.

**10.4** If the Design-Builder refuses or fails to prosecute the Work or any separable part thereof, with the diligence that will insure its timely completion as specified in the Contract Documents including any extension, or fails to complete the Work within this time, Owner may, by written notice to the Design-Builder, terminate the right to proceed with the Work (or the separable part of the Work) that has been delayed. In this event, Owner may take over the Work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the Project Site necessary for completing the Work. The Design-Builder and its sureties shall be liable for any damage to Owner resulting from the Design-Builder's refusal or failure to timely complete the Work as provided in the Contract Documents; whether or not the Design-Builder's right to proceed with the Work is terminated. This liability includes any increased costs incurred by the Owner in completing the Work.

## Article 11

### Additional Provisions

#### 11.1 Public Records

17.1.1 The cost of reproduction, access to, disclosure, non-disclosure, or 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), and other applicable State and Federal provisions. Access to such public records, may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

17.1.2 In accordance with Florida law, to the extent that Design-Builder's performance under this Contract constitutes an act on behalf of Owner, Design-Builder shall comply with all requirements of Florida's public records law. Specifically, if Design-Builder is expressly authorized, and acts on behalf of Owner under this Agreement, Design-Builder shall:

(1) Keep and maintain public records that ordinarily and necessarily would be required by Owner in order to perform the Services;

(2) Upon request from Owner's custodian of public records, provide Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost as provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(3) Ensure that public records related to this Agreement that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable law for the duration of this Agreement and following completion of this Agreement if the Design-Builder does not transfer the records to Owner; and

(4) Upon completion of this Agreement, transfer, at no cost, to Owner all public records in possession of the Design-Builder or keep and maintain public records required by Owner to perform the Services.

17.1.3 If the Design-Builder transfers all public records to Owner upon completion of this Agreement, the Design-Builder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Design-Builder keeps and maintains public records upon completion of this Agreement, the Design-Builder shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Owner, upon request from Owner's custodian of public records, in a format that is compatible with Owner's information technology systems.

17.1.4 Failure by the Design-Builder to comply with the requirements of this section shall be grounds for immediate, unilateral termination of this Agreement by Owner.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: OCA, ATTN:**

**Public Records Manager, 500 San Sebastian View, St. Augustine, FL 32084, PH: (904) 209-0805, EMAIL: [publicrecords@sicfl.us](mailto:publicrecords@sicfl.us).**

11.2 Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Article 10 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in St. Johns County, Florida.

11.3 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 agreement.

11.4 In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

**OWNER:**

**DESIGN-BUILDER:**

\_\_\_\_\_  
(Name of Owner)

\_\_\_\_\_  
(Name of Design-Builder)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

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

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

**Note Original copies of this Agreement have this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.**





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

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**Document No. 535**

Second Edition, 2010

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Washington, DC



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# Article 1

## General

### 1.1 Mutual Obligations

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

### 1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition), as modified, and all Contract Documents referenced in the executed Agreement(s) between Owner and Design-Builder.

1.2.2 *Basis of Design Documents* are as follows: are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the "Basis of Design Documents."

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.5 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.6 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.7 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.8 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition), as modified.

1.2.10 *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*, which shall be shall be agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

1.2.11 *GMP Proposal* means that proposal developed by Design-Builder in accordance with

Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*, as modified.

**1.2.12 Hazardous Conditions** are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

**1.2.13 Legal Requirements** are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

**1.2.14 Owner's Project Criteria** are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

**1.2.15 Site** is the land or premises on which the Project is located.

**1.2.16 Subcontractor** is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

**1.2.17 Sub-Subcontractor** is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

**1.2.18 Substantial Completion or Substantially Complete** means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

**1.2.19 Work** is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

## **Article 2**

### **Design-Builder's Services and Responsibilities**

#### **2.1 General Services.**

**2.1.1** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

**2.1.2** Design-Builder shall provide Owner, with a copy provided to the Owner's Representative, as provided in Section 9.1.2 of DBIA Document No: 530; *Standard Form of Agreement Between Owner and Design-Builder*, as modified, with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the *Standard Form of Agreement Between*

Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

**2.1.3** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

## **2.2 Design Professional Services.**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

## **2.3 Standard of Care for Design Professional Services.**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

## **2.4 Design Development Services.**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

**2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

**2.4.3** Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

**2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

## **2.5 Legal Requirements.**

**2.5.1** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

**2.5.2** The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.6 Government Approvals and Permits.**

**2.6.1** Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## **2.7 Design-Builder's Construction Phase Services.**

**2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to

perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

**2.7.4** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**2.7.5** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**2.7.6** Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## **2.8 Design-Builder's Responsibility for Project Safety.**

**2.8.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

**2.8.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

**2.8.3** Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.



## **2.9 Design-Builder's Warranty.**

**2.9.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work.**

**2.10.1** Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work.

**2.10.2** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

**2.10.3** The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

## **Article 3**

### **Owner's Services and Responsibilities**

#### **3.1 Duty to Cooperate.**

**3.1.1** Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

**3.1.2** Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

**3.1.3** Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

#### **3.2 Furnishing of Services and Information.**

**3.2.1** Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which

Design-Builder is entitled to rely upon in performing the Work:

**3.2.1.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

**3.2.1.2** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

**3.2.1.3** A legal description of the Site;

**3.2.1.4** To the extent available, record drawings of any existing structures at the Site; and

**3.2.1.5** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

**3.2.2** Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

### **3.3 Financial Information.**

**3.3.1** At Owner's request, Design-Builder shall promptly furnish reasonable evidence satisfactory to Owner that Design-Builder has adequate funds and resources available to fulfill all of Design-Builder's obligations under the Contract Documents. If Design-Builder fails to furnish such financial information in a timely manner, Owner may stop Work under Section 11.2.1 hereof or exercise any other right permitted under the Contract Documents.

**3.3.2** At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

**3.3.2** Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

### **3.4 Owner's Representative.**

**3.4.1** Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

### **3.5 Government Approvals and Permits.**

**3.5.1** Owner shall obtain and pay for all necessary permits, approvals, licenses, government

charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

**3.5.2** Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

**3.6 Owner's Separate Contractors.**

**3.6.1** Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## **Article 4**

### **Hazardous Conditions and Differing Site Conditions**

**4.1 Hazardous Conditions.**

**4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

**4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

**4.1.3** Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

**4.1.4** Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

**4.1.5** To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

**4.1.6** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys'

fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

#### **4.2 Differing Site Conditions.**

**4.2.1** Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

**4.2.2** Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

## **Article 5**

### **Insurance and Bonds**

#### **5.1 Design-Builder's Insurance Requirements**

**5.1.1** Design-Builder is responsible for procuring and maintaining all insurance for the coverage amounts all as set forth in the Contract Documents. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Contract Documents.

**5.1.2** Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**5.1.3** Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will be maintained in full force and effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, a certificate evidencing coverage will be supplied upon each renewal. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

#### **5.2 Owner's Liability Insurance.**

**5.2.1** Owner shall maintain adequate liability insurance from a provider authorized to do business in the State of Florida as set forth in the Contract Documents to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

#### **5.3 Owner's Property Insurance.**

**5.3.1** Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located

property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Owner is responsible for the payment of any deductibles and uninsured risk under the insurance required by this Section 5.3.1.

**5.3.2** Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

**5.3.3** Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

**5.3.4** Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

**5.3.5** Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

#### **5.4 Bonds and Other Performance Security.**

**5.4.1** Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions set forth in the Contract Documents.

**5.4.2** All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the State of Florida.

## **Article 6**

### **Payment**

#### **6.1 Schedule of Values.**

**6.1.1** Upon execution of this Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

**6.1.2** The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

#### **6.2 Monthly Progress Payments.**

**6.2.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

**6.2.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

**6.2.3** All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment.

**6.2.4** The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

#### **6.3 Withholding of Payments.**

**6.3.1** On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

**6.3.2** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

#### **6.4 Right to Stop Work and Interest.**

**6.4.1** If Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Contract Documents.

#### **6.5 Design-Builder's Payment Obligations.**

**6.5.1** Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

#### **6.6 Substantial Completion.**

**6.6.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**6.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**6.6.3** Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

#### **6.7 Final Payment.**

**6.7.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

**6.7.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

**6.7.2.1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

6.7.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.7.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

## 6.8 Procedure for Change of Payment

6.8.1 Upon execution of the Agreement, Design-Builder shall provide Owner with written payment instructions and all necessary forms required by Owner to effectuate payments to Design-Builder by wire transfer (the "Payment Information"). Contractor shall submit the initial Payment Information to Owner by certified mail or hand delivery only. If Owner receives a request to change such Payment Information, Owner agrees that it will not modify or make a change to this Payment Information without oral confirmation, followed by written confirmation, from Design-Builder's Chief Financial Officer or Design-Builder's VP of Finance. Owner shall make no changes to the Payment Information if it does not receive the oral and written confirmations as stated herein. If Owner makes any change to the Payment Information without first receiving the confirmations stated herein, it shall be solely responsible for any monies lost or stolen and not paid to Design-Builder as required under the terms of the Contract Documents.

## 6.9 Escalation

6.9.1 The Contract Price for this project has been calculated based on the current prices for the component building materials. However, the market for construction materials that are hereafter specified is considered to be volatile, and sudden price increases could occur. The Contractor agrees to use his best efforts to obtain the lowest possible prices from available construction material suppliers. **However, the Contract Price may be adjusted in the event extraordinary or highly inflationary increases in the costs of the specified materials occur during the Project, through no fault of Contractor, and would result in a substantial inequity to Contractor without such adjustment. The specified materials that are at risks are aluminum, steel, and copper.**



## **Article 7**

### **Indemnification**

#### **7.1 Patent and Copyright Infringement.**

7.1.1 Design-Builder shall defend any action or proceeding brought against the Florida Department of Economic Opportunity (DEO) or Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall, to the extent permissible by law, defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

#### **7.2 Tax Claim Indemnification.**

7.2.1 If, in accordance with Owner's written authorization, an exemption for all or part of the Work is claimed for taxes, Owner shall, to the extent permissible by law, indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's written directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

#### **7.3 Payment Claim Indemnification.**

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless DEO and Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps

necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

#### **7.4 Design-Builder's General Indemnification.**

**7.4.1** Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend DEO and Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**7.4.2** If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

#### **7.5 Owner's General Indemnification.**

**7.5.1** Owner, to the fullest extent permitted by law, and subject to the limitations of liability set forth in Section 768.28, Florida Statutes, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner, Owner's separate contractors or anyone for whose acts any of them may be liable.

**7.5.2** If an employee of Owner, Owner's separate contractors, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Owner's indemnity obligation set forth in Section 7.5.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Owner, Owner's separate contractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

## **Article 8**

### **Time**

#### **8.1 Obligation to Achieve the Contract Times.**

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with the Contract Documents.

#### **8.2 Delays to the Work.**

**8.2.1** If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance may be reasonably extended by Change Order, upon agreement by both parties. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner

or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events. In the event events reasonably beyond the Design-Builder's control and without its fault or negligence cause a delay in the Design-Builder's performance of the project, Design-Builder shall submit documentation of such delay to Owner within 7 days of the event causing the delay.

**8.2.2** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price.

## **Article 9**

### **Changes to the Contract Price and Time**

#### **9.1 Change Orders.**

**9.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

**9.1.1.1** The scope of the change in the Work;

**9.1.1.2** The amount of the adjustment to the Contract Price; and

**9.1.1.3** The extent of the adjustment to the Contract Time(s).

**9.1.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

**9.1.3** If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

#### **9.2 Work Change Directives.**

**9.2.1** A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

**9.2.2** Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

#### **9.3 Minor Changes in the Work.**

**9.3.1** Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

#### **9.4 Contract Price Adjustments.**

**9.4.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

**9.4.1.1** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

**9.4.1.2** A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

**9.4.1.3** Costs, fees and any other markups set forth in the Agreement; or

**9.4.1.4** If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

**9.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

## **9.5 Emergencies.**

**9.5.1** In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

## **Article 10**

### **Contract Adjustments and Disputes**

#### **10.1 Requests for Contract Adjustments and Relief.**

**10.1.1** If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to

incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

## **10.2 Dispute Avoidance and Resolution.**

**10.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

**10.2.2** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

**10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**10.2.4** If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

## **10.3 DELETED.**

## **10.4 Duty to Continue Performance.**

**10.4.1** Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

## **10.5 CONSEQUENTIAL DAMAGES AND LIMITATION OF LIABILITY.**

**10.5.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY

OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

**10.5.2** The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

**10.5.3 Limitation of Liability.** Design-Builder's maximum aggregate liability under the Contract Documents from any and all causes shall in no case exceed five percent (5%) of the Contract Price (as the same may be adjusted in accordance with the Contract Documents).

## **Article 11**

### **Stop Work and Termination for Cause**

#### **11.1 Owner's Right to Stop Work.**

**11.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**11.1.2** Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of the Work by Owner.

#### **11.2 Owner's Right to Perform and Terminate for Cause.**

**11.2.1** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, or (v) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

**\*Note: Need to include provision of going to the Performance Bond for completion of the work in lieu of termination with the Design-Builder. If Design-Builder fails to perform, the first step available to the County is to invoke the Surety Company for completion of the remainder of the work per the terms of the Contract Documents.**

**11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any qualified person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled

to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the reprocurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

**11.2.4** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

### **11.3 Design-Builder's Right to Stop Work.**

**11.3.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

**11.3.1.1** Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

**11.3.1.2** Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

**11.3.2** Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

### **11.4 Design-Builder's Right to Terminate for Cause.**

**11.4.1** Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

**11.4.1.1** The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

**11.4.1.2** Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

**11.4.1.3** Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-

Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

## **11.5 Bankruptcy of Owner or Design-Builder.**

**11.5.1** If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

**11.5.1.1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

**11.5.1.2** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

**11.5.2** The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

## **Article 12**

### **Electronic Data**

#### **12.1 Electronic Data.**

**12.1.1** The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

#### **12.2 Transmission of Electronic Data.**

**12.2.1** Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

**12.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of



Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

**12.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

### **12.3 Electronic Data Protocol.**

**12.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

**12.3.2** Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

**12.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

**12.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

## **Article 13**

### **Miscellaneous**

#### **13.1 Confidential Information.**

**13.1.1** Subject to applicable state and federal law, Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary at the time the information is transmitted to the receiving party; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

**13.2 Assignment.**

**13.2.1** Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

**13.3 Successorship.**

**13.3.1** Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

**13.4 Governing Law.**

**13.4.1** The Agreement and all Contract Documents shall be governed by the laws of the State of Florida. Venue for any dispute stemming from the Agreement shall be in St. Johns County.

**13.5 Severability.**

**13.5.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**13.6 No Waiver.**

**13.6.1** The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

**13.7 Headings.**

**13.7.1** The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**13.8 Notice.**

**13.8.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

**13.9 Amendments.**

**13.9.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.



**St. Johns County Board of County Commissioners**

Purchasing Division

**NOTICE OF INTENT TO AWARD**

June 15, 2020

**RE: RFQ 20-53, Design-Build Services for CDBG-DR Project – Hastings Phase III WWTP Improvements**

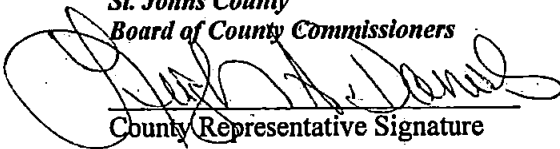
Please be advised that the Purchasing Department of St. Johns County is issuing this notice of its Intent to Award a contract to Wharton-Smith, Inc. as the highest ranked firm(s) under **RFQ 20-53, Design-Build Services for CDBG-DR Project – Hastings Phase III WWTP Improvements**. This notice will remain posted to the **St. Johns County Purchasing Department bulletin board** until 5:00 PM, Thursday, June 18, 2020.

Any person (including any bidder or proposer) who is, or claims to be, adversely affected by the County's decision or proposed decision shall file a written Notice of Protest with the Purchasing Department of St. Johns County within 72 hours after the posting of the notice of decision or proposed decision. Failure to file a Notice of Protest within the time prescribed in Section 304.10 of the St. Johns County Purchasing Manual (the Bid Protest Procedure), or failure to post the bond or other security required by the County within the time allowed for filing a bond, shall constitute a waiver of proceedings and a waiver of the right to protest. The protest procedures may be obtained from the Purchasing Department and are included in the County's Purchasing Manual. All of the terms and conditions of the County Purchasing Manual are incorporated herein by reference and are fully binding.

Should the Purchasing Department receive no protests in response to this notice, an agenda item will be submitted to the St. Johns County Board of County Commissioners for their consideration and subsequent approval to negotiation, and upon successful negotiations, execute a contract.

Please forward all correspondence, requests or inquiries directly to my attention at the information provided below.

Sincerely,  
St. Johns County  
Board of County Commissioners

  
County Representative Signature

Date: 6/15/20

Leigh A. Daniels, CPPB  
Procurement Supervisor  
(904) 209-0154 – Direct  
(904) 209-0155 – Fax  
(904) 209-0150 – Main  
[ldaniels@sjcfl.us](mailto:ldaniels@sjcfl.us)



**ST. JOHNS COUNTY  
PURCHASING DEPARTMENT**

500 San Sebastian View  
St. Augustine, Florida 32084

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**I N T E R O F F I C E   M E M O R A N D U M**

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**TO:** Teri Pinson, P.E., SJC Utility Department  
**FROM:** April Bacon, Purchasing Buyer  
**SUBJECT:** RFQ 20-53, Design-Build Services for CDBG-DR Project - Hastings Phase III WWTP Improvements  
**DATE:** June 15, 2020

Attached please find a copy of the RFQ Evaluation Summary Sheet for your file as recorded and verified at the Evaluation Committee Meeting.

Please review, evaluate and make a written recommendation for this project. Also, indicate the budgeted amount for this item along with the appropriate charge code and return to my attention as soon as possible.

Please let me know if I can assist your department in any other way.

Dept. Approval Scott Jugg  
Date 6/15/20  
Budget Amount \$ 5,267,925.00  
Account Funding Title Hastings Sewer Improvements III  
Funding Charge Code 0115-55304-1589-53120  
Award to Wharton-Smith, Inc  
Award Amount \$5,267,925.00

EVALUATION SUMMARY SHEET

June 4, 2020

ST. JOHNS COUNTY, FLORIDA

RFQ 20-53, Design-Build Services for CDBG-DR Project - Hastings Phase III WWTP Improvements

FIRM	RATER	RATER	RATER	RATER	RATER	TOTAL	Rank	COMMENTS
	Teri Pinson	James Overton	Mark Mashburn	Jared Taylor	Robert Quinney			
WHARTON-SMITH, INC.	88.1	93.0	83.5	81.5	89.5	435.6	1	
CDM CONSTRUCTORS INC	84.0	90.0	79.5	80.5	92.5	426.5	2	
THE HASKELL COMPANY	78.0	91.0	80.5	74.5	93.5	417.5	3	
REYNOLDS CONSTRUCTION, LLC	78.6	85.5	71.5	64.5	70.5	370.6	4	
SAWCROSS, INC.	64.0	82.0	70.5	57.5	85.5	359.5	5	

APPROVED: By signing below, both parties have reviewed and approve this evaluation summary of the responses submitted for this RFQ.

Assistant Purchasing Manager:

*Scott A. Davis* 6/8/20

Date:

SJC Utility Department:

*Scott A. Davis* 6/4/20

Date:

NOTE:

THE RANKING SHOWN ABOVE SHALL BE FOLLOWED UNLESS SPECIAL CONDITIONS MERIT A CHANGE IN THE NEGOTIATING ORDER, IN THIS CASE, THE SPECIAL CONDITIONS MUST BE EXPLAINED IN DETAIL IN THE COMMENTS SECTION OR ATTACHED TO THIS EVALUATION SUMMARY SHEET.

POSTING TIME/DATE FROM 4:00 p.m. June 8, 2020 UNTIL 4:00 p.m. June 11, 2020.

ANY RESPONDENT ADVERSELY AFFECTED BY AN INTENDED DECISION WITH RESPECT TO THE AWARD OF ANY SOLICITATION, SHALL FILE WITH THE ST. JOHNS COUNTY PURCHASING DEPARTMENT A WRITTEN NOTICE OF INTENT TO FILE A PROTEST NOT LATER THAN SEVENTY-TWO (72) HOURS (EXCLUDING SATURDAY, SUNDAY AND LEGAL HOLIDAYS) AFTER THE POSTING OF THE NOTICE OF INTENT TO AWARD, PROTEST PROCEDURES PROCEDURES MAY BE OBTAINED FROM THE PURCHASING DEPARTMENT.