

RESOLUTION NO. 2022 - 282

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO FINALIZE NEGOTIATIONS WITH SUPERIOR CONSTRUCTION COMPANY SOUTHEAST, LLC AS THE TOP RANKED FIRM UNDER RFQ NO. 22-15 AND, UPON FINAL AGREEMENT OF TERMS AND CONDITIONS, EXECUTING A DESIGN-BUILD CONTRACT FOR COMPLETION OF PHASE 1 FOR DESIGN-BUILD SERVICES FOR SUMMER HAVEN NORTH OLD A1A ROAD RECONSTRUCTION.

RECITALS

WHEREAS, in 2016 Hurricane Matthew caused storm surge and waves to damage portions of Summer Haven North Old A1A Road, which serves as the sole vehicular access route to 19 houses and several undeveloped lots. As such the County is moving forward with the design-build of the reconstruction of Summer Haven North Old A1A Road; and

WHEREAS, through the County's formal RFQ process, SUPERIOR Construction Company Southeast, LLC was the top ranked firm, and County staff has initiated negotiations for the initial Design-Build Agreement, which shall be for the completion of the design services through submittal of a Guaranteed Maximum Price ("GMP") Proposal, which shall be negotiated and a GMP Amendment will be submitted to the Board for approval to execute for the completion of the construction; and

WHEREAS, the County Staff finds that entering into contract to complete the work serves a public purpose; and

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 finalize negotiations with SUPERIOR Construction Company Southeast, LLC, to complete the design services through submittal of a GMP Proposal, as set forth in RFQ No: 22-15.

Section 3. Upon final agreement over terms and conditions, the County Administrator, or designee, is further authorized to execute the Design-Build Agreement in substantially the same form and format as the attached draft for Phase 1 of the Work, with intent to negotiate and submit a GMP Amendment to the Board for approval to execute for Phase 2.

Section 4. The County Administrator, or designee, is further authorized to formally cease negotiations with Superior Construction Company Southeast, LLC if it is determined that an agreement cannot be reached.

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

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 2 day of August, 2022.

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

By: Henry Dean
Henry Dean, Chair

ATTEST: CLERK OF THE CIRCUIT COURT & COMPTROLLER: Brandon J. Patty, Clerk

By: Sam Halterman
Deputy Clerk

Rendition Date 8/4/22





**DESIGN BUILD AGREEMENT
BETWEEN
ST. JOHNS COUNTY AND DESIGN-BUILD FIRM**

Design Build Agreement No: XXXXXXXXXX

Table of Contents

ARTICLE I general..... 4

1.1 The Contract Documents4

1.2 Definitions.....4

1.3 Independent Contractor.....6

1.4 Design-Build Firm’s Continuing Duty.....6

1.5 Disputes.....7

1.6 Ownership of Contract Documents.....7

ARTICLE II THE WORK..... 7

2.1 Project Description.....7

2.2 Labor and Materials8

2.3 Design-Build Firm’s Technical Submittals.....8

2.4 Project Sequencing/Arrangement.....9

2.5 Payment of Costs9

2.6 Cleaning the Jobsite9

2.7 Reporting Requirements9

2.8 Project Meetings9

2.9 Title and Risk of Loss10

2.10 Access to Work.....10

2.11 Utilities.....10

2.12 Existing Utility Lines10

2.13 Taxes.....10

2.14 Publicity and Advertising.....11

2.15 County Furnished Items11

2.16 Direct Purchase Program11

ARTICLE III CONTRACT TIME 12

3.1 Contract Time12

3.2 Time is of the Essence13

3.3 Liquidated Damages13

3.4 Disclaimer of Consequential Damages13

ARTICLE IV CONTRACT PRICE AND PAYMENT..... 14

4.1 Contract Price.....14

4.2 Schedule of Values.....17

4.3 Measurement and Payment17

4.4 Progress Payments18

4.5 Application for Payment18

4.6 Withheld Payment..... 19

4.7 Final Payment 20

ARTICLE V DESIGN-BUILD FIRM RESPONSIBILITIES..... 21

5.1 Performance 21

5.2 Authorized Representative 21

5.3 Environmental, Safety and Health 21

5.5 Final Inspection (Phase 2 Final Design and Construction)..... 23

5.7 Ownership of Work Product 23

ARTICLE VI PROJECT MANAGER 23

6.1 Project Manager Responsibilities..... 23

6.2 Field Orders 24

ARTICLE VII SUBCONTRACTORS 24

7.1 Award of Subcontracts..... 24

ARTICLE VIII CHANGES IN THE WORK..... 25

8.1 General 25

8.2 Changes in the Contract Time..... 25

8.3 Changes in the Contract Price..... 26

8.4 Acceptance of Change Orders..... 26

8.5 Notice to Sureties 26

8.6 Differing Site Conditions 26

ARTICLE IX UNCOVERING WORK, STOPPING WORK, 27

AND ACCEPTING DEFECTIVE OR NONCONFORMING WORK 27

9.1 Uncovering Work..... 27

9.2 Right to Stop Work 27

9.3 County May Accept Defective or Nonconforming Work..... 27

ARTICLE X CONTRACT SUSPENSION AND TERMINATION..... 28

10.1 Suspension 28

10.2 Termination..... 28

ARTICLE XI STANDARD OF CARE, WARRANTY AND INDEMNITY 29

11.1 Standard of Care..... 29

11.2 Warranty 29

11.3 Indemnity 30

11.4 Indemnification and Subcontracts..... 31

ARTICLE XII INSURANCE AND BONDS 31

12.1 Design-Build Firm’s Insurance Requirements..... 31

12.2 Additional Insured Endorsements and Certificate Holder 31

12.3 Workers Compensation & Employers Liability..... 31

12.4 Commercial General Liability 31

12.5 Automobile Liability..... 31

12.6 Professional Liability 32

12.7 Excess Liability..... 32

12.8 Other Requirements 32

12.9	Payment and Performance Bonds	32
ARTICLE XIII DELIVERY OF DOCUMENTS.....		33
ARTICLE XIv MISCELLANEOUS		33
14.1	Examination of Design-Build Firm’s Records.....	33
14.2	Backcharges	33
14.3	Applicable Law	33
14.4	Governing Law & Venue.....	33
14.5	Arbitration.....	33
14.6	Disputes.....	34
14.7	Enforcement Costs	34
14.8	Assignment and Arrears.....	34
14.9	Severability	34
14.10	Section Headings.....	34
14.11	Disclaimer of Third-Party Beneficiaries	34
14.12	Waiver; Course of Dealing	34
14.13	No Waiver of Sovereign Immunity.....	34
14.14	Execution in Counterparts.....	35
14.15	Entire Contract	35
14.16	Survival	35
14.17	Scrutinized Companies Lists.....	35
14.18	Employment Eligibility and Mandatory Use of E-Verify	35
14.19	Equal Employment Opportunity	36
14.20	Public Records	37
14.21	Confidentiality	37
14.22	Anti-Bribery.....	37
14.23	Truth-In-Negotiation Representation.....	38
14.24	Contingency Fees.....	38
14.25	Conflict of Interest.....	38
14.26	Written Notice.....	38

This Design-Build Agreement (“Contract”) is made this [REDACTED] day of [REDACTED], 2022 (the “Effective Date”) by and between **ST. JOHNS COUNTY** (“County”), a political subdivision of the State of Florida, whose principal offices are located at 500 San Sebastian View, St. Augustine, FL 32084; and **SUPERIOR Construction Company Southeast, LLC** (“Design-Build Firm”), a company authorized to do business in the State of Florida, with its principal offices located at: 7072 Business Park Blvd. N, Jacksonville, FL 32256, Phone: (904) 292-4240, and E-mail: bmcgarity@superiorconstruction.com, for **RFQ NO: 22-15; Design-Build Services for Summer Haven North Old A1A Road Reconstruction**, hereinafter referred to as the “Project”.

In consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

ARTICLE I GENERAL

1.1 The Contract Documents

1.1.1 The Contract Documents consist of the following documents incorporated herein by reference:

- a) This Design-Build Agreement;
- b) RFQ Documents and RFQ Forms with all addenda thereto for RFQ No: 22-15;
- c) Notice to Proceed;
- d) Specifications and Design Drawings approved under this Contract;
- e) Fully Executed Change Orders and Amendments to this Contract;
- f) Field Orders signed by the County’s Project Manager;
- g) Bonds and Insurance furnished by Design-Build Firm;

1.1.2 Documents not enumerated above are not Contract Documents and do not form part of this Contract. No terms, conditions, limitations or exclusions in Design-Build Firm’s proposal documents or invoices shall be binding upon County or become part of the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals (hereafter “Submittals”) are not Contract Documents. The County will review and take action upon Design-Build Firm’s submitted Submittals but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, nor for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Design-Build Firm.

1.1.3 All Submittals (whether in hard or soft copy) prepared by or on behalf of Design-Build Firm in the course of the Work shall be the exclusive property of the County. Ownership of any proprietary information or intellectual property contained in such Submittals shall remain with Design-Build Firm. Design-Build Firm grants the County a perpetual, royalty-free, licence to use, copy and allow third parties to use such Submittals and all proprietary information contained in them as may be required for the County’s internal business purposes including without limitation tendering, installing, operating, repairing, maintaining, modifying, reconstructing, replacing and/or upgrading the Work. Such licence shall be capable of transfer and/or sub-licencing in whole or part without notice to or further consent of Design-Build Firm. Design-Build Firm shall not be held liable for reuse of Design-Build Firm’s Submittals by the County for purposes other than originally intended as stated in the Contract Documents.

1.2 Definitions

Terms used within this Agreement shall have the meaning as set forth in the St. Johns County Purchasing Policy, or as provided herein.

1.2.1 Acceptance of the Work: Written acceptance of the Work by the County and the County’s Project Manager.

1.2.2 Applicable Laws: All local, state, and federal laws, statutes, codes, ordinances, rules and regulations in effect at the time Work and Warranty Work is performed under this Contract.

1.2.3 Claim: Any claim, liability, loss, demand, demand for arbitration, damage, lien, cause of action of any kind, obligation, responsibility, cost, expense, royalty, fee, assessment, penalty, fine, judgment, interest or award, pending or threatened, whether arising by law, contract, tort, voluntary settlement or otherwise.

1.2.4 Contract Price: The sums set forth herein under Article IV, and the GMP Amendment, upon execution, shall

constitute the Contract Price, as may be amended by Change Order or Amendment. Unless otherwise approved by the County in writing, the Contract Price includes all taxes, including without limitation, income and withholding tax of any kind and sales tax imposed by the state or by the County and paid by Design-Build Firm or any Subcontractors with respect to sales of goods purchased for the performance of the Work.

1.2.5 Contract Time: The number of calendar days between commencement and completion of the Work, established in paragraph 3.1.1 of this Contract, as may be revised by Change Order.

1.2.6 Design-Build Work (Work): The entire design and construction or the various separately identifiable parts thereof required to be performed or furnished by Design-Build Firm under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents and all labor, services, and documentation necessary to produce such Design Professional Services and Construction; furnishing, installing, and incorporating all materials and equipment into such Construction; and related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

1.2.7 Design Services: Preparation and submittal of plans, Drawings and Specifications for the Project by licensed professional engineering, architectural, and surveying firms, and other engineering and design-related services included in the Contract Documents and required to be performed by or under the supervision of a licensed professional as part of the Design-Build Work.

1.2.8 Drawings: The graphic and pictorial portions of the Contract Documents, illustrating the design, location and dimensions of the Work, generally including but not limited to, plans, elevations, sections, details, general notes, schedules and diagrams.

1.2.9 Early Work: Work, such as site development and related activities, procurement of long lead materials/equipment, and any other advanced Work the parties agree should be performed in advance of establishment of the GMP in order to avoid any material impacts to the critical path of the Project schedule. Early Work may be incorporated in the scope of the initial Design-Build Contract, or may be added via Change Order.

1.2.10 Facility: The physical facility or facilities to be designed and constructed for the County as part of the Project.

1.2.11 Final Completion: Completion of all Work in compliance with the Contract Documents, as determined by the County, and issuance of a Final Certificate for Payment.

1.2.12 Guaranteed Maximum Price: The maximum amount, including, but not limited to, the Design-Build Fee and the Cost of the Work, that will be paid to the Design-Build firm to fully complete final design and construction of the Project. The Guaranteed Maximum Price ("GMP") may be modified only by Change Order or Amendment in accordance with this Contract. The GMP shall be established in the GMP Amendment.

1.2.13 Jobsite: Any physical location or other place on, under, in, at or through which any aspect of the Work is performed.

1.2.14 Notice to Proceed (NTPs): Written notice(s) given by the County to Design-Build Firm authorizing Design-Build Firm to proceed with the Design-Build Work and fixing the date on which the Contract Time will commence to run and identifying the corresponding Substantial Completion and Final Completion dates. The Contract Documents may specify more than one Notice to Proceed applicable to different stages and/or portions of the Design-Build Work.

1.2.15 Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Design-Build Firm to illustrate materials or equipment for some portion of the Work.

1.2.16 Project: The total undertaking to be accomplished for County by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

1.2.17 Project Manager: The County's representative assigned to the Project, or any part thereof, to observe the Work and perform certain other obligations of the County as defined in Article VI below.

1.2.18 Self-Perform Work: Work performed by employees of: (1) the Design-Build Firm; or (2) any entity that controls, is controlled by, or is under common control with any entity that is part of the Design-Build Firm. Self-Perform Work is distinguished from Work performed by Subcontractors unaffiliated with the Design-Build Firm or the entities of which the Design-Build Firm is comprised.

1.2.19 Shop Drawings: Drawings, diagrams, schedules, and other data specially issued for the Work by Design-Build Firm or a Subcontractor, Sub-subcontractor, and material suppliers to illustrate some portion of the Work.

1.2.20 Subcontractor: A Supplier engaged by the Design-Build Firm to perform a portion of the Work.

1.2.21 Substantial Completion: The stage in the progression of the Work (or phase and/or portion thereof) when the Work is sufficiently complete in accordance with this Contract so that the County can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose.

1.2.22 Work: See Design Build-Work above.

1.2.23 Work Product: Work Product has the meaning specified in Section 5.7 herein.

1.3 Independent Contractor

Design-Build Firm represents that it is fully experienced and properly qualified, licensed, equipped, organized, and financed to perform the Work under this Contract. Design-Build Firm shall act as an independent Design-Build Firm and not as an agent of the County in performing the Work under this Contract and shall maintain complete control over its employees and all of its Subcontractors and suppliers of any tier. Nothing contained in this Contract or any lower-tier subcontract or purchase order awarded by Design-Build Firm shall create any contractual relationship between any such subcontractor or supplier and the County. Design-Build Firm shall perform all Work in accordance with the requirements of this Contract and in accordance with its own methods subject to compliance with the Contract Documents.

1.4 Design-Build Firm's Continuing Duty

1.4.1 Design-Build Firm shall have a continuing duty to read, carefully study and compare each of the Contract Documents and the Submittals and shall provide written notice, within three (3) business days, to the Project Manager and the County of any inconsistency, ambiguity, error or omission which Design-Build Firm may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the County or the Project Manager of the Contract Documents or Submittals shall not relieve any such approval by evidence of Design-Build Firm's compliance with the Contract. The County has provided to Design-Build Firm, documents for the Project, as exhibits to the RFQ Document. HOWEVER, THE COUNTY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO DESIGN-BUILD FIRM CONCERNING SUCH DOCUMENTS. By the execution hereof, Design-Build Firm acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be sufficient for proceeding with the Work under the Project, and that Design-Build Firm has not, does not, and shall not rely upon any representation or warranties by the County concerning such documents as no such representation or warranties have been or are hereby made.

1.4.2 In the event of conflicts of discrepancies, the Contract Documents shall be interpreted in the order of precedence as follows:

- a) Supplementary conditions, if any, shall govern over the terms of this Contract;
- b) This Contract and Exhibits shall govern over all RFQ Documents, Drawings and Specifications;
- c) Specifications shall govern over Drawings;
- d) Numerical dimensions shall govern over dimensions obtained by scaling; and
- e) Larger scale Drawings shall govern over smaller scale Drawings.

1.4.3 Should Design-Build Firm have any questions concerning interpretation or clarification of the Contract Documents, Design-Build Firm shall submit to the Project Manager in writing a request for clarification that clearly and concisely sets forth the issues for which such request is sought. The County will render its determination concerning such interpretation or clarification, which determination shall be considered final and conclusive unless Design-Build Firm files a written protest pursuant to Section 1.5 titled "Disputes". Design-Build Firm's protest shall state clearly and in detail the basis thereof. The County will consider Design-Build Firm's protest and render its decision thereon within ten (10) business days. If Design-Build Firm does not agree with the County's decision, Design-Build Firm shall deliver written notice to that effect to the County within three (3) business days of receipt of the County's decision.

1.5 Disputes

1.5.1 Design-Build Firm is responsible for requesting instructions, interpretations or clarifications and is solely liable for any cost and/or expenses arising from its failure to do so. Any dispute relating to a question of fact arising under this Contract shall be resolved through good faith efforts upon the part of Design-Build Firm and the County. Unless otherwise directed in writing, Design-Build Firm shall at all times carry on the Work and maintain its progress schedule in accordance with the requirements of this Contract and the determination of the County, pending resolution of any dispute. Any dispute that is not disposed of by mutual agreement shall be decided by the County who shall reduce such decision to writing. The decision of the County shall be final and conclusive. Design-Build Firm's failure to protest the County's determinations, instructions, clarifications or decisions within fourteen (14) calendar days after receipt thereof shall constitute a waiver by Design-Build Firm of all its rights to further protest, judicial or otherwise.

1.5.2 In no event will a dispute, the filing of a protest, claim or appeal, or the resolution or litigation thereof, relieve Design-Build Firm from its obligations to timely perform the Work required by this Contract and to maintain the progress schedule in accordance with this Contract.

1.6 Ownership of Contract Documents

Any and all Contract Documents shall remain the property of the County. Design-Build Firm is granted a limited license to use and reproduce applicable portions of the Contract Documents issued by the County appropriate to, and for use in, execution of the Work. Design-Build Firm shall have the right to keep one record set of the Contract Documents upon completion of the Work; provided, however, that in no event shall Design-Build Firm and/or Design-Build Firm's subcontractors use, or permit to be used, any or all of such Contract Documents on other projects without the specific written consent of the County.

ARTICLE II THE WORK

2.1 Project Description

2.1.1 Generally. The County intends to complete the design and reconstruction of approximately 1,689 feet of Old A1A in Summer Haven North. The Project shall be completed in two (2) phases. Phase 1 shall consist of Preliminary Design, and Phase 2 shall be Final Design and Construction.

2.1.2 Phase 1 Preliminary Design Development. Design-Build Firm shall perform such Design Services to the level of completion required for Design-Build Firm to develop and submit a GMP proposal for Phase 2 Final Design and Construction, as set forth in Section 2.1.3 below. Phase 1 may also include Early Work when authorized by an approved Change Order, signed by both parties. Phase 1 will consist of the design and permitting of Old A1A in Summer Haven North, including replacement/adjustment of existing revetments, design of anchored steel sheet pile and pile cap, replacement of the drainage outfall pipe, utility coordination and relocation, and roadway in accordance with County Standards.

Design-Build Firm shall develop and submit a preliminary GMP Proposal upon reaching sixty percent (60%) design, and shall submit a final GMP Proposal upon reaching eighty percent (80%) design. The final GMP Proposal shall be subject to consideration by the County as provided in Article II of this Contract.

Design-Build Firm shall obtain and pay for all permits, approvals, licenses and fees as necessary and ordinary for the performance of the Work. Design-Build Firm shall provide complete copies of all permits, approvals and licenses to the County within five (5) business days after obtaining them, and receipt of such documents by the County shall be a condition precedent to final payment. The County shall provide reasonable assistance to Design-Build Firm in obtaining those permits, approvals and licenses that are Design-Build Firm's responsibility. Excluding such permits, approvals and licenses, the County shall obtain all approvals, easements, and the like required for construction.

2.1.3 Phase 2 Final Design and Construction. Phase 2 Design-Build Work shall consist of the completion of Design Services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, and the provision of warranty services, all as further described in the Contract Documents. Upon receipt of Design-Build Firm's GMP proposal for Phase 2, the County, in its sole discretion, may (a) accept Design-Build Firm's GMP proposal and issue a GMP Amendment and Notice to Proceed for Phase 2 Design-Build Work, or (b) enter into a negotiation with Design-Build Firm to achieve a mutually acceptable GMP, scope and/or schedule on which to

proceed. In the alternative, the County may reject Design-Build Firm's proposal for Phase 2 and (i) terminate this Contract, (ii) proceed with another Design-Build Firm, and (iii) exercise the "Off-Ramp" provisions of Paragraph 2.1.4 below. In such event, Design-Build Firm acknowledges and agrees that the County's rejection of Design-Build Firm's GMP proposal, in accordance with this Agreement, shall not entitle Design-Build Firm to make any claim for damages, loss or profits or compensation of any kind, and all such claims are hereby waived and released by Design-Build Firm.

The Contract Price for Phase 2 will be set forth in the GMP Amendment, when mutually agreed between the parties. Once the parties have agreed upon the Contract Price and the County has issued a GMP Amendment and Notice to Proceed for Phase 2, Design-Build Firm shall perform the Phase 2 Design-Build Work.

2.1.4 Off-Ramp. The parties acknowledge that the County's ability to successfully complete the Project may be significantly impacted if the County elects to terminate this Contract at the end of Phase 1 Preliminary Design Development, rather than proceeding with Phase 2 Final Design and Construction under Paragraph 2.1.3 above, and that certain design consultant or engineering services Subcontractors are not available to continue working on the Project upon such termination. Therefore, Design-Build Firm shall incorporate the obligations of this Contract into its respective subcontracts, specifically including the County's right to unilaterally utilize design documents in the event of termination as described in Section 10.2. Design-Build Firm shall also include a provision whereby such subcontract(s) may be assigned to the County. In the event of termination as described in Section 10.2 herein, Design-Build Firm agrees to assign such subcontract(s) upon the County's request, subject to the prior rights of a surety, if any, obligated under Bond relating to the Contract. In the event the County accepts the assignment of a Subcontract(s), the County assumes the Design-Build Firm's rights and obligations under such Subcontract(s).

2.2 Labor and Materials

2.2.1 Design-Build Firm shall perform all of the Design-Build Work required, implied, or reasonably inferable from, the Contract Documents. Unless otherwise provided in the Contract Documents, Design-Build Firm shall provide and pay for all labor, supervision, materials, supplies, tools, transportation, storage, construction equipment and machinery, utilities (including but not limited to water, heat, fuel, light, and cooling), and all other services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Materials, articles and equipment furnished by Design-Build Firm for incorporation into the Work shall be new unless otherwise specified in the Contract Documents.

2.2.2 Design-Build Firm shall use only competent and skilled personnel to perform and supervise the Work and shall remove from such Work any person determined to be unfit, unqualified, or acting in violation of any obligation of Design-Build Firm under this Contract. In the event a person is removed from the Work, Design-Build Firm shall promptly replace such individual with another who is fully competent and skilled to perform the Work at Design-Build Firm's sole expense.

2.2.3 Except as otherwise required for the safety or protection of persons or the Work or property at the Jobsite or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Jobsite shall be performed during regular working hours, Monday through Friday. Design-Build Firm will not perform Work on a Saturday, Sunday, or any County-observed holiday. Design-Build Firm may perform Work outside regular working hours or on Saturdays, Sundays, or County-observed holidays only with the County's prior written consent, which will not be unreasonably withheld. Design-Build Firm shall seek such prior written consent from the County a minimum of two (2) business days in advance of performing any such Work.

2.2.4 In addition, when the Work requires by Florida Statute, Design-Build Firm shall use only licensed, registered and/or certified personnel to perform the Work. Such Statutes may include, but are not limited to, Chapter 489 (Regulation of Professions and Occupations Contracting) and Chapter 633, Part III (Fire Protection and Suppression) of the Florida Statutes.

2.3 Design-Build Firm's Technical Submittals

Design-Build Firm shall prepare its design, drawings, diagrams, specifications and other technical requirements (Technical Submittals) in accordance with the Contract Documents and submit same to the County for review allowing at least fourteen (14) calendar days for such review (unless a shorter time frame is otherwise mutually agreed in writing). The County will review the Design-Build Firm's Technical Submittals and indicate that the Work may proceed, Work may proceed subject to resolution of indicated comments, or the Work may not proceed. The Design-Build Firm shall revise and resubmit Technical Submittals as necessary.

The Design-Build Firm shall not be entitled to any extension of time or cost adjustment for any delay caused by the Design-Build Firm's failure to submit Technical Submittals for review within the time frame set out above or within the time periods identified and agreed pursuant to Design-Build Firm's schedule. Design-Build Firm shall provide written notice to the County whenever the Work is likely to be delayed as a result of late submittal of a Technical Submittal.

The County's review of Design-Build Firm's Technical Submittals does not constitute acceptance or approval and does not relieve Design-Build Firm from full performance and compliance with all requirements of this Contract.

2.4 Project Sequencing/Arrangement

Design-Build Firm shall not be limited in the sequencing or staging of the Work except to the extent that the Contract Documents impose limitations. Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization/arrangement of the Drawings or Design, shall control Design-Build Firm in dividing the Work or in establishing the extent or scope of Work to be performed by Subcontractors.

2.5 Payment of Costs

Except as otherwise expressly provided, Design-Build Firm shall pay directly all costs and expenses of the Work of any kind or nature whatsoever including but not limited to all costs of permitting, regulatory compliance, obtaining and maintaining required bonds and insurance pursuant to Article 12, payments due to Subcontractors and suppliers, legal, financial, sales, use and similar taxes on materials and equipment, transportation and storage of materials and equipment, preparation of schedules, budgets and reports and all other costs required to achieve Substantial Completion and Final Completion in accordance with the Contract Documents.

2.6 Cleaning the Jobsite

Design-Build Firm shall keep the Jobsite neat, secure and orderly during performance of the Work and shall clean up and remove all waste, rubbish and construction debris from the Jobsite as they accumulate. Upon Final Completion of the Work, Design-Build Firm shall remove all waste, rubbish and construction debris from and about the Jobsite as well as all tools, appliances, construction equipment, temporary utilities, temporary construction and machinery and surplus materials. Design-Build Firm shall restore to original condition all property not designated for alteration by the Contract Documents.

2.7 Reporting Requirements

2.7.1 Daily Record. During the Construction phase of the Project, the Design-Build Firm shall keep a daily record of the Work at the Jobsite. At a minimum the Daily Record shall include weather conditions, number of workers (by trade) on the Jobsite, material/equipment deliveries, any unusual or special occurrences at the Jobsite, description of the Work performed at the Jobsite and percentage completion, and a list of all visitors to the Jobsite. Daily Records shall be submitted by close of business the following day. Daily Records shall not constitute nor take the place of any notice required to be given by Design-Build Firm to the County pursuant to the Contract Documents. In addition to the Daily Records, Design-Build Firm shall keep a daily log available to the County and the Permitting Agency(ies) inspectors for reviewing and copying on the Project's Jobsite.

2.7.2 Monthly Progress Report. Commencing with NTP, under Phase 1 and Phase 2, the Design-Build Firm shall prepare and submit a written monthly report by the tenth (10th) day of each calendar month. The Monthly Progress Report shall be provided in the latest version of Microsoft® Word. Monthly reports shall at a minimum describe: (1) Work completed in the prior month, (2) planned Work for the current month, (3) estimate of actual percent complete; (4) detailed explanations of any activity that is behind schedule, (5) corrective actions taken to recover schedule, (6) safety and environmental incidents and corrective actions taken, (6) change orders pending and approved, (7) status report of procurement activity; (8) request for information (RFI) log; (9) progress photos and (10) any other items as may be reasonably requested by the County.

2.8 Project Meetings

2.8.1 Kick-off Meeting. Prior to the commencement of Phase 1 Preliminary Design Development, the Design-Build Firm shall attend a kick-off meeting with the County to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals, review and approval turn-around times contained in the Project schedule, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.8.2 **Pre-Construction.** Prior to the commencement of Phase 2 Final Design and Construction, the Design-Build Firm shall attend a pre-construction meeting with the County to discuss the Project schedule, procedures for handling shop drawings and other submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Design-Build Work.

2.8.2 **Progress Review Meetings.** During the prosecution of the Design Services and Design Build Work, the Design-Build Firm shall attend regularly scheduled Progress Review Meetings convened by the County with respect to the Project. Design-Build Firm shall have its subcontractors and suppliers attend all such meetings (including the kick-off and pre-construction meetings) as may be directed by the County. The purpose of the Progress Review Meetings is to keep the County fully informed of all aspects of the Work, and for reviewing execution plans, technical or financial concerns, progress status and scheduling of the Work, remedial actions, quality concerns, safety concerns, interfaces, and County and Design-Build Firm plans for resolving issues.

2.9 Title and Risk of Loss

Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Work or the Project shall pass to the County no later than time of payment. Such transferred title shall in each case be good, free and clear of any and all security interests, liens or other encumbrances. Design-Build Firm shall, however, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until Substantial Completion, regardless of the extent to which the loss was insured or the availability of insurance proceeds. The transfer of title does not imply acceptance by the County nor does it relieve Design-Build Firm from the responsibility for any loss or damage to items.

2.10 Access to Work

The County and the Project Manager, shall at all reasonable times have full access to all parts and locations of the Jobsite(s) from commencement of the Work through Final Completion. Design-Build Firm shall take whatever steps necessary to provide such access when requested.

2.11 Utilities

Design-Build Firm shall, at its expense, make all arrangements necessary to secure the availability of and maintain all temporary utilities required to construct and operate Design-Build Firm's Work as required by the Contract Documents. If the scope of Work requires, Design-Build Firm shall arrange for activating permanent power, water, and sanitary service to the Project prior to Substantial Completion. This includes legal sketches and descriptions for easement as well as record drawings requirements required by utility companies. The County will assume permanent utility costs at Substantial Completion.

2.12 Existing Utility Lines

2.12.1 When existing Utility Lines (e.g. conduits, pipelines, transmission mains and utility equipment and appurtenances) shown on the Drawings are to be removed or relocated, Design-Build Firm shall notify the Project Manager in ample time for taking measures for prevention of the interruption of any required services prior to the beginning of operations. Locations of existing utility lines shown on the Drawings are based on the best information available to the Project Manager, but shall not be considered exact either as to location or number of such lines.

2.12.2 Design-Build Firm shall protect Utility Lines constructed under terms of the Contract and those discovered or shown on Drawings to be existing. In the event that Design-Build Firm damages any existing Utility Lines, shown or not shown on the Drawings, Design-Build Firm shall immediately notify the Project Manager. Damage occurring to existing Utility Lines due to Design-Build Firm's failure to exercise reasonable care shall be repaired or replaced at no cost to the County.

2.13 Taxes

2.13.1 Design-Build Firm shall pay all sales, use and other taxes, levies, duties and assessments of every nature which may be applicable to any Work under this Contract. The Contract Price and any agreed variations thereof shall include all applicable taxes imposed by law. Design-Build Firm shall make any and all payroll deductions required by law. Design-Build Firm herein indemnifies and holds the County harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions. The indemnity provision of this section shall survive the expiration or termination of this Contract. Design-Build Firm may not use County's tax-exempt status unless specifically authorized in writing in advance.

2.13.2 Foreign Entity Tax Withholding. Amounts due to certain foreign persons or entities may be subject to backup withholding taxes under federal law. If Design-Build Firm is a foreign person or entity that is required to complete Internal Revenue Service (“IRS”) Form W-8ECI, Design-Build Firm shall provide County a copy of Design-Build Firm’s current Form W-8ECI prior to issuance of any invoice or payment under this Contract. If Design-Build Firm fails to timely provide a completed, current Form W-8ECI, County will withhold all backup withholding taxes from the amounts due Design-Build Firm, remit such sums to the IRS, and pay Design-Build Firm only the remainder. County makes no representation regarding the tax treatment of amounts due to Design-Build Firm, and Design-Build Firm indemnifies and holds County harmless from any claims or damages in any way relating to or arising from any tax withholding by County pursuant to this section.

2.14 Publicity and Advertising

2.14.1 Design-Build Firm shall not make any announcement or release any information or publish any photographs concerning this Contract, the Work or the Project or any part thereof to any member of the public, press or any official body, without prior written consent from the County.

2.14.2 Use of the County Seal or County Logo is strictly prohibited. In accordance with County Ordinance 92-2 and County Administrative Policy 101.3, Design-Build Firm may not manufacture, use, display, or otherwise use any facsimile or reproduction of the County Seal or Logo without express written approval of the Board of County Commissioners of St. Johns County, Florida.

2.15 County Furnished Items

2.15.1 The County shall furnish to Design-Build Firm written and tangible material concerning conditions below ground at the Jobsite, as available. Such written and tangible material is furnished to Design-Build Firm only in order to make disclosure of such material and for no other purpose. By furnishing such material, the County does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly, or at all, and shall have no liability therefore. The County shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project’s Jobsite.

2.15.2 Subject to Paragraph 1.6 above, the County shall furnish Design-Build Firm electronic copies of the Contract Documents for execution of the Work. Hard copies of the Contract Documents shall be the responsibility of Design-Build Firm. The above responsibility notwithstanding, Design-Build Firm may request a (hardcopy) set of Contract Documents from the County. Design-Build Firm will reimburse the County for the actual costs (or \$25, whichever is greater), of providing such hardcopy set.

2.16 Direct Purchase Program

2.16.1 The County is tax exempt and may elect to implement a direct purchase program whereby it may purchase materials or equipment directly from the Supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment are referred to as “Direct Purchase Materials.” Direct Purchase Materials shall be governed by the State of Florida Department of Revenue Rule, 12A-1.094 (“DOR Rule”), the terms herein, and the County’s policies on the subject in effect at the time Design-Build Firm commences construction of the Project. For each direct purchase, the County shall: (a) issue its purchase order directly to the Supplier that the Design-Build Firm intends to use for the supply of certain materials or equipment; (b) provide the Supplier with a copy of the County’s Florida Consumer’s Certificate of Exemption; (c) make payment directly to the Supplier based on the Supplier’s invoice which must be issued directly to the County; (d) take title to the tangible personal property from the Supplier at the time of purchase or delivery by the Supplier; (e) assume the risk of damage or loss at the time of purchase; and (f) issue a separate Certificate of Entitlement pursuant to the DOR Rule to each Supplier and to Design-Build Firm to confirm that the tangible personal property purchased from that Supplier will go into or become part of a public work. The County’s purchase order shall be attached to each such Certificate of Entitlement. The Design-Build Firm shall provide County with a written list of all potential Direct Purchase Materials and any other information required by the County with respect to each direct purchase. The Design-Build Firm shall also provide the County with monthly reports pertaining to the “Direct Purchase Materials.” Notwithstanding the fact that the Supplier’s invoice must be issued directly to the County as provided above, the Design-Build Firm shall be responsible for obtaining a copy of all Direct Purchase Materials’ invoices from the Supplier and shall be accountable for verifying and ensuring that the Direct Purchase Materials’ received by the County through each direct purchase are in good condition and are consistent with the materials that were ordered from the Supplier and described in each invoice.

2.16.2 The GMP amount shall be reduced by the net, undiscounted amount of the purchase order for each Direct Purchase, plus all sales taxes that would have applied. **ISSUANCE OF THE PURCHASE ORDERS BY THE COUNTY DOES NOT CHANGE ANY OF THE DESIGN-BUILD FIRM’S RESPONSIBILITIES REGARDING THE RECEIVING**

AND INSTALLATION OF THE MATERIALS PURCHASED. The Design-Build Firm remains fully responsible for all other obligations it has under the terms of this Contract.

ARTICLE III CONTRACT TIME

3.1 Contract Time

The Contract Time shall be established for each of the two Phases as provided herein. The County intends to issue two (2) separate NTPs for the Design-Build Work as follows:

3.1.1 Phase 1 Preliminary Design Development. Design-Build Firm shall commence the Work within ten (10) calendar days following receipt of the County's Notice to Proceed and shall substantially complete all Work within [REDACTED] consecutive calendar days as may be extended pursuant to Paragraph 8.2 of this Contract.

3.1.1.1 Work under Phase 1 Preliminary Design Development shall be deemed complete upon final acceptance by County and Design-Build Firm of the GMP Proposal after all negotiations and adjustments have been made.

3.1.2 Phase 2 Final Design and Construction. Design-Build Firm shall commence the Work within ten (10) calendar days following receipt of the County's Notice to Proceed and shall substantially complete all Work within [REDACTED] consecutive calendar days as may be extended pursuant to Paragraph 8.2 of this Contract. Final Completion shall be reached within [REDACTED] consecutive calendar days after Substantial Completion.

3.1.2.1 When Design-Build Firm considers the Design-Build Work (or portion thereof) is substantially complete, Design-Build Firm shall notify the Project Manager in writing and submit a comprehensive list of incomplete items to be completed or corrected prior to Final Completion. The Project Manager will promptly inspect the Work following receipt of Design-Build Firm's notice and attached list of incomplete items. For Design Build Work under Phase 2, the Project Manager may refuse to inspect the Work if the Work is obviously not substantially complete or when Design-Build Firm's list is not complete.

3.1.2.2 The following items shall be completed prior to Design-Build Firm's request for a Substantial Completion inspection of Design Build Work under Phase 2:

- a) All general construction completed;
- b) Project Jobsite cleared of Design-Build Firm's excess equipment, storage shacks, trailers, and/or building supplies;
- c) Project record Drawings and Specifications submitted in accordance with the Contract Documents;
- d) Preliminary as-built drawings submitted;
- e) All applicable permits required for use provided;
- g) All operations and maintenance manuals, training literature, and software for all equipment provided;
- h) Manufacturers' certifications and warranties provided; and
- i) All required spare parts and special tools provided.

3.1.2.3 If Substantial Completion is not obtained at the inspection called by Design-Build Firm, for reasons which are the fault of Design-Build Firm, the cost of any subsequent inspections requested by Design-Build Firm for the purpose of determining Substantial Completion shall be the responsibility of Design-Build Firm and shall be assessed against the final Application for Payment.

3.1.2.4 Once Substantial Completion is achieved and within the time allowed by F.S. 218.70 et seq, the Project Manager will prepare the punch list required by the Local Government Prompt Payment Act. Unless otherwise mutually agreed, the punch list items shall be corrected by Design-Build Firm within thirty (30) calendar days and prior to any request for Final Inspection and Acceptance. The failure to include any corrective Work or pending items not yet completed on the list does not alter the responsibility of Design-Build Firm to complete the Work pursuant to this Contract.

3.1.3 Design-Build Firm, prior to commencing Phase 1 Preliminary Design Development, shall submit to the Project Manager for his/her information, Design-Build Firm's Project schedule for completing the Design Services. Design-Build Firm's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing).

3.1.4 Design-Build Firm, prior to commencing Phase 2 Final Design and Construction, shall submit to the Project Manager for his/her information, Design-Build Firm's Project schedule for completing the Design Build Work. Design-Build Firm's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing), and relate to the entire Phase 2 Design-Build Work. By way of illustration and not exclusion, Design-Build Firm's schedule shall: (1) contain sufficient activities to assure adequate planning for all phases of the Phase 2 Design-Build Work, (2) include approved changes to the Phase 2 Design-Build Work that impact the schedule, (3) include a clearly defined critical path, and (4) include a unique description for each activity. In the event any schedule revision impacts the completion time as provided in Paragraphs 3.1.1 and 3.1.2 above, Design-Build Firm shall submit a request for additional time, in accordance with procedures as provided in Paragraph 8.2 below. Failure by Design-Build Firm to strictly comply with the provisions of this Paragraph shall constitute a material breach of this Contract.

3.2 Time is of the Essence

Time is of the essence regarding each and every obligation of Design-Build Firm under this Contract. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

3.3 Liquidated Damages

3.3.1 Execution of this Contract by Design-Build Firm shall constitute Design-Build Firm's acknowledgment that the County will sustain damages in the amount identified in Paragraph 3.3.2 below for each and every calendar day during which completion of the Design-Build Work required is delayed beyond the time limit for achieving Substantial Completion and/or Final Completion as specified in Paragraphs 3.1.1 and 3.1.2 above. Design-Build Firm and County agree that such damages shall be presumed to be the damages actually sustained by the County as defined below, and that because of the nature of the Project, it would be impracticable or impossible to determine or extremely difficult to fix the actual damages.

3.3.2 If Design-Build Firm fails to achieve Substantial Completion or Final Completion of the Design-Build Work by its applicable date, then the County shall be entitled to withhold from any amounts otherwise due Design-Build Firm or to be paid as a debt due the following per day sum for each and every calendar day of unexcused delay "Liquidated Damages" as follows.

Design-Build Work	Substantial Completion	Final Completion
Phase 1 Preliminary Design Development	\$1,665 per day	\$1,665 per day
Phase 2 Final Design and Construction	\$4,866 per day	\$4,866 per day

The parties agree that such Liquidated Damages are not a penalty but rather a genuine pre-estimate of monetary damages sustained by the County for loss of revenue and/or increased project administration expenses related to this Contract because Design-Build Firm failed to perform and complete Work within the time fixed for completion or additional time granted pursuant to the provisions hereof. The assessment of Liquidated Damages is without prejudice to the County's rights of termination and Design-Build Firm's obligation to complete the Work.

3.3.3 The total amount of liquidated damages for delay associated with the Design-Build Firm's failure to achieve Substantial Completion and/or Final Completion within the Contract Time, as may be extended pursuant to Paragraph 8.2 of this Contract, shall not exceed a cumulative total of [REDACTED]. Such Liquidated Damages are not intended to, and do not, liquidate Design-Build Firm's liability under the indemnification provisions of Section 11.4 even though third-party Claims against the Indemnified Party may arise out of the same event, breach or failure that gives rise to the Liquidated Damages.

3.3.4 Should Design-Build Firm fall behind the approved Work schedule; the County reserves the right to deduct Liquidated Damages based on an estimated period of late completion. The County need not wait until completion of Work to withhold Liquidated Damages from Design-Build Firm's progress payments.

3.4 Disclaimer of Consequential Damages

The County shall not be liable to Design-Build Firm, whether in contract, tort, warranty or under any statute or on any other basis, for any consequential, incidental, indirect, special, punitive or exemplary damages suffered or incurred by Design-Build Firm in connection with this Contract, even if the County has been advised of the possibility of such damages. Consequential damages shall include, by way of example and without limitation, opportunity costs, loss of use of facilities

or other assets, consequential damage claims of subcontractors, lost profits, lost savings, lost business, lost bonding capacity, lost financing, lost reputation or lost goodwill.

ARTICLE IV CONTRACT PRICE AND PAYMENT

4.1 Contract Price

4.1.1 The Contract Price for Phase 1 Preliminary Design Development Work shall be computed separately and independently from the Contract Price for Phase 2 Final Design and Construction Work.

4.1.2 Compensation for Phase 1 Preliminary Design Development Work shall be a lump sum amount of **one million one hundred fifty-one thousand four hundred ninety-four dollars eleven cents (\$1,151,494.11)**. Such lump sum amount shall constitute full payment for satisfactory performance of the Phase 1 Work including all direct and indirect labor, personnel related costs, taxes, expenses, costs, fees, overhead and profit, services of Subcontractors (includes design consultants), and any other expense or cost of whatever nature incurred by the Design-Build Firm as may be required and/or necessary to complete the Phase 1 Work and agreed to in writing by both parties to this Contract. Design-Build Firm shall be entitled to monthly progress payments in proportion to the percentage of the completed Phase 1 Work. Payments made to Design-Build Firm pursuant to this Contract for Phase 1 Work shall be the sole and complete compensation to which Design-Build Firm is entitled.

4.1.3 Compensation for Phase 2 Final Design and Construction Work shall be a Guaranteed Maximum Price that shall consist of the sum of Allowable and Reimbursable Costs, Design-Build Firm's Fee, and Construction Contingency. The Guaranteed Maximum Price shall be developed and submitted to the County in accordance with the requirements herein. Pursuant to Article II of this Contract, in the event the County elects to negotiate and/or accept the submitted Guaranteed Maximum Price, a GMP Amendment shall be issued and executed by both parties. The GMP as defined herein is the maximum price the County will pay Design-Build Firm as payment for all of Phase 2 Design-Build Work and is guaranteed by the Design-Build Firm to be the maximum price it will charge to fully and satisfactorily complete Phase 2 Design-Build Work of the Project.

4.1.3.1 Formation of Guaranteed Maximum Price ("GMP") Proposal. During Phase 1, Design-Build Firm shall prepare GMP Basis Documents for the development of a GMP for Phase 2 Final Design and Construction. The GMP Basis Documents shall include, but not be limited to, the following:

- a) A list of drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;
- b) A list of assumptions and clarifications made by Design-Build Firm in preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;
- c) Detailed cost estimates by trade categories, contingency and other items and Design-Build Firm's fee that comprise the GMP;
- d) Procurement Plan, Subcontract Plan, and Bidding Procedures;
- e) The date of Substantial Completion upon which the proposed GMP is based, to the extent said date has not already been established under Article III of this Contract, and the Schedule for Work upon which the date of Substantial Completion is based;
- f) A schedule of applicable alternate prices;
- g) A schedule of unit prices and allowance items, provided however, that only such allowances as are agreed to by the County shall be included;
- h) Design-Build Firm's Key Personnel designated for Phase 2 of the Project, including Design-Build Firm's Authorized Representative, if different than Phase 1;
- i) Risk Registry; and
- j) The timeframe by which the GMP Proposal shall remain valid for consideration by the County.

Design-Build Firm acknowledges and understands that the GMP Basis Documents may be incomplete, lack detail, and require future adjustment at the time the GMP Proposal is submitted to the County. Nevertheless, the GMP Proposal shall be intended to represent the Design-Build Firm's offer to complete the Work under Phase 2 of the Project.

4.1.3.2 The GMP shall be based upon actual procured quotes and bids from Subcontractors, vendors, and suppliers or based on estimated costs. The GMP will include an allowance within each Work package as determined by the Design-Build Firm

and approved by the County when a maximum price for the Work package has not been determined at the time of the GMP. This allowance will be used as the maximum value for the specific line item and all remaining funds within the Work package will revert to the County after the price is determined through competitive bidding or final pricing by the Design-Build Firm. If an allowance is not included within the Work package, the agreed upon price is the maximum for that item.

4.1.3.3 After submission of the GMP Proposal, Design-Build Firm and County shall meet to review the GMP Proposal. If the County has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Build Firm of such comments or findings. Design-Build Firm shall make appropriate adjustments to the GMP Proposal. If the Design-Build Firm's GMP Proposal is acceptable to the County, a GMP Amendment shall be drafted and submitted for approval by the St. Johns County Board of County Commissioners. Subject to additions or deductions by approved Change Order as provided in this Contract, Design-Build Firm shall certify in the GMP Amendment that the agreed GMP (i) contains sufficient amounts to perform all Work necessary for the Final Completion of the Project; and (ii) contains sufficient amounts to provide and construct any items or facilities that are not contained in the GMP Basis Documents but which are necessary for fully functional and operational Facilities that meet the requirements and criteria established for the Project. Design-Build Firm acknowledges and agrees that any and all Allowable and Reimbursable Costs which would cause the GMP to be exceeded shall be paid by the Design-Build Firm without reimbursement by the County and shall not be a basis of any Change Order.

4.1.3.4 Design-Build Firm shall not commence with Phase 2 Work prior to the GMP Amendment being fully executed and receipt of the County's Notice to Proceed for Phase 2 Work. If the County rejects the GMP Proposal, or fails to notify Design-Build Firm in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect and this Contract will be terminated. In such event, the County shall be free to use any of the documents and information developed through the date of termination for completion of the Project by others as more fully described in Paragraph 2.1.4 of this Contract.

4.1.4 Design-Build Firm's Fee. The Design-Build Firm's Fee shall be an amount equal to a negotiated percent of the sum of the Allowable Costs provided in the GMP Proposal and included in the GMP Amendment. The Design-Build Firm's Fee rate established in the GMP Amendment shall be applied to approved Change Orders issued by the County. In the event however, that the cumulative adjustments to the Contract Price exceed twenty five percent (25%) of the original GMP, the Design-Build Firm's Fee shall be subject to renegotiation.

4.1.5 Construction Contingency. The GMP shall include a Construction Contingency which sum shall be established by the Design-Build Firm and the County and included in the GMP Amendment. Construction Contingency shall be used by Design-Build Firm to pay for miscellaneous Work items which are required to complete the Project including trade scope gaps, missed work, areas of damage that may occur between trades during construction, Subcontractor coordination problems, Subcontractor insolvency, emergencies, overtime costs to maintain/accelerate the Project schedule due to unavoidable delays (excludes acceleration requested by the County under an approved Change Order), and other costs that were not known or reasonably foreseeable as of the effective date of this Contract (and not otherwise recoverable by bond or applicable insurance).

4.1.5.1 The Construction Contingency included in the GMP is not a design contingency, and shall not be used for changes in the scope of schedule of Phase 1 Work. No increase in the Construction Contingency will be allowed once the GMP is established.

4.1.5.2 Design-Build Firm shall not charge any sum to the Construction Contingency without the County's prior written approval, which approval shall not be unreasonably withheld or delayed. Design-Build Firm shall maintain a separate log of all contingency use requests with detailed backup and submit copies of the logs on a monthly basis to the County. Design-Build Firm is not entitled to a Fee on any expenditure from the Construction Contingency. The County shall receive all of the Construction Contingency remaining unallocated at Final Completion.

4.1.6 County's Contingency. A lump sum amount for the County's Contingency shall be established by the County. The County's Contingency is controlled solely by the County. The County's Contingency is outside of the GMP and is not part of the original bonds except to the extent that the County Contingency is utilized as a change to the Contract in accordance with Article VIII "Changes in the Work" of the Contract, and may only be used for County requested additions and revisions. Expenditures from the County's Contingency must be made by Change Order issued and approved by the County. Design-Build Firm shall not be entitled to any compensation from any unused amounts of the County's Contingency.

4.1.7 Shared Savings. If the sum of the actual Cost of the Work and Design-Build Firm's Fee is less than the GMP (as adjusted by Change Orders), the difference ("Savings") shall accrue to the benefit of the parties as follows: fifty percent (50%) to the County and fifty percent (50%) to the Design-Build Firm, exclusive of any remaining Construction Contingency or County Contingency.

4.1.7.1 Savings shall be calculated and paid as part of the Final Payment under Section 5.6 of this Contract with the understanding that to the extent Design-Build Firm incurs costs after Final Completion which would have been payable to Design-Build Firm as a Cost of the Work, Design-Build Firm shall be entitled to payment from the County for that portion of such costs what were distributed to County as Savings.

4.1.7.2 Should the Design-Build Firm fail to achieve Substantial Completion by the Substantial Completion date identified in the Notice to Proceed (subject to extensions of time permitted by this Contract), then the Design-Build Firm shall not receive shared savings otherwise due the Design-Build Firm pursuant to this Section, if any.

4.1.8 Project Cost Report. Design-Build Firm shall operate and maintain an open and transparent system of pricing and charging for costs incurred during the course of the Project which shall be updated to include actual costs incurred. A report on costs shall be prepared and provided on a monthly basis, to the county. Design-Build Firm agrees to make such changes to its system of keeping these records as the County may reasonably request in writing.

4.1.9 Allowable Costs. The terms "Allowable Costs" or "Cost of the Work" shall mean costs reasonably incurred by Design-Build Firm in the proper performance of the Work. The Cost of the Work shall include the following:

- (1) Wages of direct employees of Design-Build Firm performing the Work at the Jobsite, or with the County's agreement, at locations off the Jobsite, provided however, that the costs for those employees of Design-Build Firm performing design services shall be calculated on the basis of prevailing market rates for design professional performing such services, or, if applicable, those rates set forth in an exhibit to this Contract.
- (2) Wages or salaries of Design-Build Firm's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Jobsite or working off-site to assist in the production or transportation of material and equipment necessary for the Work.
- (3) Wages or salaries of Design-Build Firm's personnel stationed at Design-Build Firm's principal or branch offices and performing design and Project administration functions. However, such costs shall be excluded from Design-Build Firm's Fee.
- (4) Costs incurred by Design-Build Firm for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining Contracts, or which are customarily paid by Design-Build Firm, to the extent such costs are based on wages and salaries paid to employees of Design-Build Firm in performance of the Work on this Contract.
- (5) The reasonable portion of the cost of travel, accommodations and meals for Design-Build Firm's personnel necessarily and directly incurred in connection with the performance of the Work, provided the costs are in accordance with County Policy.
- (6) Payments properly made by Design-Build Firm to Subcontractors (including design consultants) for performance of portions of the Work, including bond premiums incurred by such Subcontractors for Subcontracts over \$100,000.
- (7) Costs of Design-Build Firm's self-performed Work to the extent such self-performed Work is identified in Design-Build Firm's Subcontract Plan and authorized by the County.
- (8) Costs incurred by Design-Build Firm in repairing or correcting defective, damaged or nonconforming Work, provided that such defective, damaged or nonconforming Work resulted from causes other than the fault or negligence of the Design-Build Firm, or those working by or through Design-Build Firm. If the costs associated with such defective, damaged or nonconforming Work are recoverable from insurance, Design-Build Firm shall use its best efforts to obtain recovery from the appropriate source and credit County if recovery is obtained.
- (9) Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.
- (10) Costs of removal of all nonhazardous substances, debris and waste materials from the Jobsite.
- (11) Costs incurred in establishing, operating and demobilizing the Jobsite office and other temporary facilities necessary for the performance of the Work.
- (12) Rental charges for all necessary machinery and equipment rented from an outside company (exclusive of hand tools owned by the workers, used at the Jobsite), including installation, repair and replacement, dismantling,

removal, maintenance, transportation and delivery costs at prevailing competitive rates for similar machinery and equipment in the Jobsite vicinity and incurred in the performance of the Work.

- (13) Rental charges for Design-Build Firm's equipment. Any such rental charges shall be solely based on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the County will be based on one-half the derived hourly rate under this subsection.
- (14) All fuel and utility costs incurred in the performance of the Work.
- (15) Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.
- (16) Costs for royalties, licenses, tests and inspections incurred by Design-Build Firm as a requirement of the Contract Documents.

4.1.10 Reimbursable Costs. The following items will not be subject to any percentage markup (fee) for overhead and profit:

- (1) Performance and Payment Bonds;
- (2) Warranty Bonds;
- (3) Permit Fees;
- (4) Insurance Premiums

4.1.11 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Work:

- (1) Compensation for Design-Build Firm's personnel stationed at Design-Build Firm's principal or branch offices or offices other than the Jobsite office, except allowable costs described in Paragraph 4.1.9 above.
- (2) Overhead and general expenses, except as provided for in Paragraph 4.1.9 above, or which may be recoverable for changes to the Work.
- (3) The cost of Design-Build Firm's capital used in the performance of the Work.
- (4) Rental costs of machinery and equipment, except as specifically provided in Paragraph 4.1.9 above.
- (5) Costs, if any, which would cause the GMP, as may be amended from time to time in accordance with this Contract, to be exceeded, unless agreed to in writing by both parties in accordance with this Contract.
- (6) Any other labor related costs not defined under Paragraph 4.1.9 that is not approved by the County at the time of the GMP.
- (7) Expenses for travel, including Design-Build Firm-supplied vehicles for personal use, incurred by Design-Build Firm's employees while traveling for purposes other than the direct execution of the Work.

4.1.12 Final GMP. At the completion of the Project, the Final GMP shall not include unused Contingency or Owner-Direct Purchases.

4.2 Schedule of Values

4.2.1 Prior to the commencement of Phase 1 Preliminary Design Development (and within ten (10) calendar days after receipt of the County's Notice to Proceed for Phase 2 Final Design and Construction), Design-Build Firm shall submit to the County and to the Project Manager a Schedule(s) of Values allocating the Contract Price to the various portions of the Work. Design-Build Firm's Schedule(s) of Values shall be prepared in such form, with such detail, and supported by such data as the Project Manager or the County may require to substantiate its accuracy. Design-Build Firm shall not imbalance the Schedule(s) of Values nor artificially inflate any element thereof. The violation of this provision by Design-Build Firm shall constitute a material breach of this Contract.

4.2.2 Upon approval by the County, the Schedule(s) of Values shall be used as a basis for Design-Build Firm's Application for Payment. The total of all payments in the Schedule(s) of Values must at all times be equal to the Contract Price for the Design-Build Work. No progress payments shall be made to Design-Build Firm until acceptable Schedule(s) of Values are submitted as described in Paragraph 4.2.1 above.

4.3 Measurement and Payment

4.3.1 Design-Build Firm shall make all surveys necessary for determining all quantities of Work to be paid under this Contract. Copies of field notes, computations and other records made by Design-Build Firm for the purpose of determining quantities shall be furnished to the Project Manager upon request. Design-Build Firm shall notify the Project Manager prior to the time such surveys are made. The Project Manager may but shall have no obligation to witness and verify such surveys.

Measurements and computations shall be made by such methods as the County may consider appropriate for the class of work measured. The dividing limits, lines or planes between adjacent items or classes of excavation, concrete, or other types of Work where not definitely indicated on the Drawings or in the Specifications shall be as determined by the County.

4.3.2 No payments to Design-Build Firm (or portions thereof) shall, at any time, constitute approval or acceptance of the Work under this Contract, nor be a waiver by the County of any of the terms contained herein.

4.4 Progress Payments

4.4.1 Prior to Design-Build Firm's submittal of the initial Application for Payment, Design-Build Firm shall have delivered the following documents:

- a) Schedule of Values
- b) Project Schedule
- c) Certified copy of recorded bond
- d) Insurance Certificates

The County will not make any payment to Design-Build Firm until Design-Build Firm has complied with these requirements for each Phase of the Project.

4.4.2 On or before the tenth (10th) day of each calendar month, Design-Build Firm shall submit an Application for Payment to the Project Manager in such form and manner, and with such supporting data and content, as the Project Manager may require. Such Application for Payment shall be based on the amount of Work done or completed during the payment period which is defined as the first day of the preceding calendar month through the last day of the preceding calendar month. The Project Manager will review the Application for Payment to determine whether the quantity and quality of the Work is as represented in the Application for Payment and thereafter confirm to the County the amount properly owing to Design-Build Firm. Upon receipt by the County of the Project Manager's recommendation for payment, payments will be made in accordance with the Local Government Prompt Payment Act (Sections 218.70-218.80 of the Florida Statutes) less such amounts, if any, otherwise owing by Design-Build Firm to the County or which the County shall have the right to withhold. Any Application for Payment determined by the County not to be suitable for payment shall be modified and processed in accordance with the County's assessment.

4.4.3 In the event any dispute with respect to any payment or Application for Payment cannot be resolved between Design-Build Firm and the County's Project staff, Design-Build Firm may demand in writing a meeting with and review by the County's Assistant Director of Purchasing and Contracts. Such meeting and review shall occur within ten (10) business days of receipt by the County of Design-Build Firm's written demand. The Assistant Director of Purchasing and Contracts shall issue a written decision on the dispute within ten (10) business days of such meeting. This decision shall be deemed the County's final decision for the purpose of the Local Government Prompt Payment Act.

4.4.4 The County may withhold from each progress payment made to Design-Build Firm an amount not to exceed five (5%) percent of payment as retainage until final acceptance of all Work in accordance with Section 255.078 of the Florida Statutes. Any interest earned on retainage shall accrue to the benefit of the County. The County shall make prompt payment to Design-Build Firm, unless in accordance with Section 255.078(6) of the Florida Statutes, such funds are the subject of a good faith dispute, claim or demand by the County or Design-Build Firm.

4.4.5 Design-Build Firm warrants and guarantees that title to Work, materials, and equipment covered in any Application for Payment, whether incorporated in the Project or not, shall pass to the County no later than the time of payment and shall be free and clear of liens, claims, security interests or other encumbrances.

4.5 Application for Payment

4.5.1 Design-Build Firm may make Application for Payment, at intervals of not more than once a month for Work satisfactorily completed during the Project. Design-Build Firm shall submit with each Application for Payment an updated Project schedule acceptable to the Project Manager and include progress as-builts for the Work. Design-Build Firm shall not combine Phase 1 Preliminary Design Development and Phase 2 Final Design and Construction Applications for Payment on the same form. Applications for Payment shall be on a form provided by the County, unless otherwise approved by the County, in writing. In the event the County approves an alternate Application for Payment, Design-Build Firm shall include, at a minimum, the following on each Application for Payment:

- a) The Contract Number;
- b) A unique Application for Payment number;
- c) Design-Build Firm's legal name and address;
- d) Taxpayer identification number (Design-Build Firm's federal employer identification number);
- e) Brief description of the completed Work, in accordance with Design-Build Firm's Schedule of Values;
- f) The original Contract Price including approved Change Order amounts; and,
- g) Preferred remittance address, if different from the mailing address.

Design-Build Firm's Fee shall be identified as a separate line item on each Application for Payment and shall be proportional to the percentage of the Work completed, less payments previously made on account of Design Builder's Fee.

The County may require any other information from Design-Build Firm that the County deems necessary to verify Design-Build Firm's Application for Payment. No later than ten (10) days after execution of this Contract or Notice to Proceed has been issued, the County will identify in a separate written notice the submittal requirements for Design-Build Firm's payment requests.

4.5.2 Delivered, stored or stockpiled materials may be included in an Application for Payment provided Design-Build Firm meets the following conditions:

- a) Materials are suitably and securely stored at the Jobsite or a bonded warehouse (acceptable to the County);
- b) An applicable purchase order or Supplier's invoice is provided listing the materials in detail, cost of materials and identifying this specific Project by name; and
- c) The material is insured against loss or damage (from whatever source) or disappearance prior to incorporation into the Work.

Payments for such materials shall be at the sole discretion of the Project Manager, shall be based only upon the actual cost of the materials to Design-Build Firm, and shall not include any overhead or profit to Design-Build Firm.

4.5.3 Each Application for Payment shall be signed by Design-Build Firm and shall constitute Design-Build Firm's representation that the Work has progressed to the level for which payment is requested, that the Work has been properly installed or performed in full accordance with this Contract, and that Design-Build Firm knows of no reason why payment should not be made as requested. Design-Build Firm's final Application for Payment shall also be accompanied by a full and complete release and/or waiver of all liens complying with Section 713.20, Florida Statutes.

4.5.4 Design-Build Firm must remit undisputed payment due for labor, services, or materials furnished by Subcontractors and suppliers hired by Design-Build Firm, within ten (10) days after receipt of each progress payment from the County pursuant to Section 218.735, Florida Statutes. If necessary for the protection of the County, the County shall have the right, at its sole option, to make payment by joint check or by direct check to Design-Build Firm's Subcontractors or suppliers without advance notice to or consent of Design-Build Firm. If joint checks are issued following claims by Design-Build Firm's Subcontractors or suppliers, the County shall be entitled to an administrative fee of \$50.00 per check for the expense of processing each joint check. Any amounts paid directly to a Subcontractor or supplier will be deducted from payments made to, or amounts due or that may become due to, Design-Build Firm. The issuance of a joint check shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the County to repeat the procedure in the future.

4.5.5 No progress payment, nor any use or occupancy of the Project by the County, shall be interpreted to constitute approval or acceptance of any Work under this Contract, nor be considered a waiver by Design-Build Firm of any of the terms of this Contract.

4.5.6 The County's performance and obligation to pay under this Contract is contingent upon an appropriation of lawfully available funds by the Board of County Commissioners. The County shall promptly notify Design-Build Firm if the necessary appropriation is not made.

4.6 Withheld Payment

4.6.1 The County may decline to make payment, may withhold funds otherwise payable and, if necessary, may demand the return of some or all of the amounts previously paid to Design-Build Firm, if:

- a) Any Claims are made against Design-Build Firm by the County or third parties, including Claims for liquidated damages or if reasonable evidence indicates the probability of the making of any such Claim;
- b) Any Claims are made against the County, the County's property or any other party indemnified hereunder which is or might be covered by Design-Build Firm's Indemnification obligations under Section 11.2 below;
- c) Design-Build Firm fails to pay Subcontractors or others in full and on-time;
- d) Design-Build Firm fails to submit schedules, reports, or other information required under the Contract;
- e) Design-Build Firm fails to diligently prosecute the Work and maintain progress to assure completion within the Contract Time;
- f) Design-Build Firm persistently fails to fully and timely perform the Work in accordance with the Contract Documents;
- g) Defective or nonconforming Work is not remedied; or
- h) Design-Build Firm is in default of any other representation, warranty, covenant or performance obligation of this Contract.

4.6.2 If Claims or liens filed against Design-Build Firm or property of the County connected with performance under this Contract are not promptly removed by Design-Build Firm after receipt of written notice from the County to do so, the County may remove such Claims or liens and all costs in connection with such removal shall be deducted from withheld payments or other monies due, or which may become due, to Design-Build Firm. If the amount of such withheld payments or other monies due Design-Build Firm under the Contract is insufficient to meet such cost, or if any Claim or lien against Design-Build Firm is discharged by the County after final payment is made, Design-Build Firm and its surety or sureties shall promptly pay the County all costs (including attorney's fees) incurred thereby regardless of when such Claim or lien arose.

4.7 Final Payment

4.7.1 Phase 1 Preliminary Design Development

Before being eligible for final payment of any amounts due, the Design-Build Firm shall deliver to the County all Work Product (as defined in Paragraph 5.6.3 below) prepared by and for the County under this Contract. The Design-Build Firm shall clearly state "Final Application for Payment" on the Design-Build Firm's final/last billing to the County for Phase 1 Preliminary Design and Development. This shall constitute Design-Build Firm's certification that all Services have been properly performed and all charges, costs and expenses have been invoiced to the County. Any other charges, costs or expenses not properly included on this Final Application for Payment are waived by Design-Build Firm.

4.7.2 Phase 2 Final Design and Construction

4.7.2.1 Upon Design-Build Firm's receipt of the Final Certificate for Payment, Design-Build Firm may submit a final Application for Payment provided the following has been completed or submitted with such final payment application:

- a) Deliver to the County all Work Product prepared by and for the County under this Contract (as defined in Paragraph 5.7 below);
- b) Complete all items applicable to the Work identified in Paragraph 5.4.2;
- c) Complete all Work listed on the punch list prepared in accordance with Paragraph 5.4.4;
- d) Consent of Surety for final payment and/or retainage;
- e) Final Waiver and Release of Claim signed by Design-Build Firm;
- f) Submittal of final corrected as-built (record) Drawings;
- g) Settlement of Liquidated Damages, as applicable; and
- h) Settlement of liens and Claims, if any.

4.7.2.2 Acceptance of Final Payment shall constitute a waiver of all Claims against the County by Design-Build Firm except for those Claims previously made in writing against the County by Design-Build Firm, pending at the time of Final Payment, and identified in writing by Design-Build Firm as unsettled at the time of its request for Final Payment.

4.7.2.3 In the event Design-Build Firm fails to make a Final Application for Payment, or to resubmit a final Application for Payment within ninety (90) days after being requested to do so, the County may deem any and all retained funds to be abandoned property and shall give notice of abandonment to Design-Build Firm. The County may set off against the final payment any amounts due to County from Design-Build Firm arising out of or under this or any other Contract between them.

ARTICLE V DESIGN-BUILD FIRM RESPONSIBILITIES

5.1 Performance

5.1.1 Design-Build Firm warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish Design-Build Firm's ability to satisfy its contractual obligations hereunder. Design-Build Firm warrants that neither it nor any Subcontractor is currently on the convicted vendor list maintained pursuant to Section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. Design-Build Firm shall immediately notify the County in writing if its ability to perform is compromised in any manner during the term of the Contract.

5.1.2 Design-Build Firm shall throughout the performance of this Agreement, cooperate with the County, and shall perform its responsibilities, obligations and services in a timely manner so as to meet all of its obligations under this Agreement.

5.1.3 Design-Build Firm shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or samples for such portion of the Work. If Design-Build Firm performs any portion of the Work where Design-Build Firm knows or reasonably should know such Work involves a recognized error, inconsistency or omission in the Contract Documents without notice to the Project Manager and the County, Design-Build Firm shall bear responsibility for such performance and shall bear the cost of correction.

5.1.4 Design-Build Firm shall perform the Work strictly in accordance with this Contract.

5.1.5 Design-Build Firm shall confine its operations to the Jobsite or such other land and areas identified in and permitted by the Contract Documents. Design-Build Firm shall assume full responsibility for any damage to any such land or area, to the County or occupant thereof, or of any adjacent land or areas, resulting from the performance of the Work. Should any Claim be made by any such County or occupant because of the performance of the Work, Design-Build Firm shall promptly settle with such other party by negotiation or otherwise resolve the Claim by other dispute resolution proceeding or at law. Design-Build Firm shall, to the fullest extent permitted by Applicable Law, indemnify and hold harmless the County, and its officers, directors, agents and employees and anyone directly or indirectly employed by them from and against Claims, costs, losses, and damages arising out of or resulting from any Claim or action, legal or equitable, brought by any such County or occupant against the County or any other party indemnified hereunder to the extent caused by or based upon Design-Build Firm's or a Subcontractor's performance of the Work.

5.1.6 Design-Build Firm is solely and exclusively responsible for supervising all workers at the Jobsite. Design-Build Firm shall supervise and direct the Work using Design-Build Firm's best skill, effort and attention. Design-Build Firm shall be responsible to the County for any and all acts or omissions of Design-Build Firm, its employees, Subcontractors, and others engaged in the Work on behalf or under direction of the Design-Build Firm.

5.1.7 Design-Build Firm and the Work must comply with all Applicable Law and the requirements of any applicable grant agreements.

5.2 Authorized Representative

5.2.1 Prior to commencing Work, Design-Build Firm shall designate in writing a competent, authorized representative(s) acceptable to the County to represent and act for Design-Build Firm ("Authorized Representative") during all phases of the Design-Build Work. All communications given to the Authorized Representative shall be binding upon Design-Build Firm. An Authorized Representative may be added, removed or changed upon prior written notice given pursuant to Section 13.18 titled "Written Notice". Any such addition, removal or change is subject to the County's approval.

5.2.2 At all times during construction under Phase 2 of the Project, Design-Build Firm shall have one or more Authorized Representatives present on the Jobsite. Such Authorized Representative shall be capable to effectively communicate with the County or the County's Project Manager, execute and enforce applicable Contract Documents and address Jobsite safety and environmental requirements.

5.3 Environmental, Safety and Health

5.3.1 Safety and Protection. Design-Build Firm shall be solely and exclusively responsible for conducting operations under this Contract to avoid risk of harm to the health and safety of persons and property and for inspecting, supervising and monitoring all equipment, materials (whether in storage on or off the Jobsite), work practices and safety precautions (including but not limited to adequate maintenance of traffic) used in the Work to ensure compliance with its obligations under this Contract. Design-Build Firm shall provide or cause to be provided necessary training and furnish all safety construction equipment/tools, including OSHA compliant and ANSI certified personal protective equipment as appropriate and necessary for the performance of the Work, to its Subcontractors of every tier and enforce the use of such training and safety construction equipment/tools.

5.3.2 Compliance. Design-Build Firm shall comply with all Applicable Laws bearing on the safety of persons or property, or their protection from damage, injury or loss including compliance with applicable permits, Project plans and approvals. To the extent allowed by law, Design-Build Firm shall assume all responsibility and liability with respect to all matters regarding the safety and health of its employees and the employees of Design-Build Firm's Subcontractors and suppliers of any tier, with respect to the Work.

5.3.3 Stop Work Authority. Notwithstanding the foregoing, the County reserves the right to direct Design-Build Firm to stop Work and correct an unsafe condition at any time that any person present at the Jobsite identifies an unsafe condition or action. For this purpose only, any person at the Jobsite is authorized to act on behalf of the County.

5.3.4 Safety Representative. Prior to commencing Work, Design-Build Firm shall designate in writing a member(s) of its Jobsite construction team as its Safety Representative. Such Safety Representative shall be acceptable to the County and shall have responsibility for implementing all safety procedures, including OSHA, responsibility for the prevention of accidents, authority for monitoring safety of the Work, authority to correct unsafe conditions or acts by its employees or Subcontractors, the ability to oversee compliance with and address environmental requirements, and coordinate with other on-site contractors and subcontractors on safety and environmental matters required for the Work. In the absence of the required written designation, this person shall be Design-Build Firm's Superintendent.

5.3.5 Safety Reporting Requirements. Design-Build Firm shall maintain accident and injury records as required by Applicable Law. Such records will be made available to the County upon request. Design-Build Firm shall immediately report to the County any death, injury or damage to property incurred or caused by Design-Build Firm's employees and employees of Design-Build Firm's Subcontractors and suppliers of any tier.

5.3.6 Drug Free Workplace. By signing this Contract, Design-Build Firm agrees to maintain a healthy and productive workforce and safe working conditions thru compliance with the Drug-Free Workplace Act (Chapter 112, Florida State Statutes). Design-Build Firm's personnel shall not possess, use, manufacture, distribute or be under the influence of while on the Jobsite (or any other location where the provisions of this Contract applies) alcoholic beverages and/or illegal drugs or any other "Drug" as such term is defined in the Drug-Free Workplace Act.

5.3.7 Occupational Safety and Health Act (OSHA). Design-Build Firm warrants that all materials, equipment, services, etc., delivered or provided to the County shall conform in all respects to the standards set forth in the Occupational Safety and Health Act (OSHA) of 1970 as amended and the failure to comply will be considered a breach of this Contract. Design-Build Firm further certifies that if material, equipment, service, etc., delivered or provided to the County is subsequently found to be deficient in any OSHA requirement in effect on date of delivery or service fulfillment date, all costs necessary to bring the material, equipment, service, etc., into compliance with the aforementioned requirements shall be borne by Design-Build Firm.

5.3.8 Toxic Substances/Federal Hazard Communication "Right to Know and Understand" Regulations
The Federal "Right to Know and Understand" Regulation (also known as the Hazard Communication/Globally Harmonized System of Classification and Labeling of Chemicals (GHS) implemented by OSHA requires employers to inform their employees of any toxic substances to which they may be exposed in the workplace, and to provide training in safe chemical storage, labeling, handling practices and emergency procedures.

Accordingly, Design-Build Firm is required to provide completed Safety Data Sheets (SDS) for each hazardous substance provided to the County under this Contract. This includes hazardous substances that are not directly included in the Contract Documents, but are included in the goods or services provided by Design-Build Firm to the County. The SDS for each substance must be sent to the County's Project Manager and must also be sent to:

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

In the event that hazardous material is improperly handled or stored by Design-Build Firm, its Subcontractors, any sub-subcontractors, or any employee or agent of any of the aforementioned which results in contamination of the Jobsite, Design-Build Firm shall immediately notify the County and the appropriate governmental or regulatory authority and shall take whatever action is necessary or desirable to remediate the contamination at Design-Build Firm's sole cost and expense. Further, Design-Build Firm shall indemnify and hold harmless the County from any and all cost, expense, action, or liability whatsoever resulting from such contamination and/or remedial activities. The indemnity provisions of this section shall survive the expiration or earlier termination of this Contract.

5.5 Final Inspection (Phase 2 Final Design and Construction)

When all Design-Build Work is finally complete and Design-Build Firm is ready for a final inspection, Design-Build Firm shall provide written notice to the County and the Project Manager. The Project Manager, with Design-Build Firm's cooperation, will conduct such reviews, inspections and tests as may be reasonably required to satisfy the County that the Design-Build Work, or identified portion of the Work, conforms to all requirements of the Contract Documents. If the Project Manager determines that the Design-Build Work or any part of the Work is not complete or fails to conform to the Contract Document requirements, Design-Build Firm will be notified in writing of deficiencies. After correcting all deficiencies Design-Build Firm shall again initiate the procedures for final inspection as set forth above. The Project Manager will issue a Final Certificate for Payment following satisfactory inspection of the Design-Build Work provided Design-Build Firm has delivered to the Project Manager the final corrected as-built Drawings and the final bill of materials, if any.

5.7 Ownership of Work Product

5.7.1 All concepts, products, processes (patentable or otherwise) and copyrightable material (including but not limited to documents, specifications, calculations, maps, sketches, notes, reports, studies, proposals, data, models, samples, surveys, drawings, designs, electronic software, and any other results of the Work), first developed, produced or reduced to practice by Design-Build Firm or Subcontractor, or purchased under this Contract, or at the County's expense ("Work Product"), shall be and remains the County's property upon creation. At the County's request, Design-Build Firm shall provide the County with copies of supporting computations, analyses, sketches, or similar items pertaining to the Design-Build Firm's Work Product.

5.7.2 The Design-Build Firm may not reuse Work Product developed by Design-Build Firm for the County without the express written permission of the County. The County may, at its option, reproduce and reuse Work Product (in whole or in part) and Design-Build Firm agrees to such reuse in accordance with this provision. Any plans which the Design-Build Firm provides under this Contract shall contain a statement that they are subject to reuse in accordance with the provisions of Section 287.055(10), Florida Statutes.

5.7.3 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 this Contract and the consummation of the transactions contemplated hereby.

ARTICLE VI PROJECT MANAGER

6.1 Project Manager Responsibilities

6.1.1 The County shall designate as its representative a Project Manager who shall be fully acquainted with the Project. The Project Manager shall be the County's representative from the Effective Date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the County only to the extent provided in this Article VI.

6.1.2 The County and Design-Build Firm shall communicate with each other in the first instance through the Project Manager.

6.1.3 The Project Manager shall be the initial interpreter of the requirements of the Drawings and Specifications and the judge of the performance there under by Design-Build Firm. The Project Manager shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of Design-Build Firm.

6.1.4 The Project Manager shall review Design-Build Firm's Applications for Payment and shall confirm to the County for payment to Design-Build Firm, those amounts then due to Design-Build Firm as provided in this Contract.

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

6.1.6 The Project Manager shall review and accept, or take other appropriate action as necessary, concerning Design-Build Firm's submittals including but not limited to Shop Drawings, Product Data and Samples. Such review, acceptance or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

6.1.7 The Project Manager may authorize minor changes in the Work by field order as provided elsewhere herein. The Project Manager does not have authority to approve adjustments to the Contract Price or Contract Time. If at any time Design-Build Firm believes that acts or omissions of the County constitute a change to the Work, Design-Build Firm shall submit a written notice in accordance with the requirements of Article VIII.

6.1.8 The Project Manager shall, upon written request from Design-Build Firm, conduct inspections to determine the date of Substantial Completion and the date of Final Completion, shall receive and forward to the County for the County's review and records, written warranties and related documents required by this Contract and shall issue a Final Certificate for Payment upon compliance with the requirements of this Contract.

6.1.9 The Project Manager's decision in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

6.2 Field Orders

The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or Contract Time and not inconsistent with the intent of this Contract. Such changes shall be affected by written field order and shall be binding upon Design-Build Firm. Design-Build Firm shall carry out such field orders promptly.

ARTICLE VII SUBCONTRACTORS

7.1 Award of Subcontracts

7.1.1 Design-Build Firm may engage Subcontractors as required to perform the Work and fulfill Design-Build Firm's obligations under this Contract. Design-Build Firm is required to ensure that Disadvantaged Business or Small Business Enterprises (DBE/SBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) have equal opportunity to receive and participate in any subcontracting opportunities under this Agreement. Design-Build Firm is responsible for complying with the following criteria:

1. Achieve DBE/MBE/WBE/SBE participation by using certified subconsultants and subcontractors; OR
2. If unable to utilize DBE/MBE/WBE/SBE certified subconsultants and subcontractors, submit documentation detailing the Good Faith Efforts made in utilization of potential DBE/MBE/WBE/SBE certified subconsultants and subcontractors.

7.1.2 Work performed by a Subcontractor shall be pursuant to an appropriate agreement between Design-Build Firm and the Subcontractor that specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the County. No Subcontractor is intended to be or shall be deemed a third-party beneficiary of this Contract. Nothing contained in the Contract Documents shall create any contractual relationship between the County and any such Subcontractor nor shall it create any obligation on the part of the County to pay or cause the payment of any moneys due any such Subcontractor except as may otherwise be required by Applicable Law.

Design-Build Firm shall retain full responsibility to the County for all Work performed under the Contract Documents. All persons engaged in the Work of the Project are the responsibility and under the control of Design-Build Firm.

7.1.3 Design-Build Firm shall give personal attention to fulfillment of the Contract and shall keep the Work under Design-Build Firm's control. When any Subcontractor fails to execute a portion of the Work in a manner satisfactory to the County, Design-Build Firm shall remove such Subcontractor immediately upon written request from the County, and the Subcontractor shall not again be employed on the Project. The County shall not be responsible for added costs to the Design-Build Firm, if any, of employing a replacement for any such removed Subcontractor. The County will not entertain requests to arbitrate disputes among Subcontractors or between Design-Build Firm and Subcontractor(s) concerning responsibility for performing any part of the Work.

ARTICLE VIII CHANGES IN THE WORK

8.1 General

8.1.1 The County may, at any time, without invalidating this Contract and without notice to sureties, direct changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, by Change Order or by field order. Design-Build Firm agrees to promptly comply with such orders and proceed with the Work, which shall be performed under the applicable requirements of the Contract Documents. Contract Time and Contract Price will be adjusted, in accordance with Sections 8.2 and 8.3 below, by written Change Order for changes which materially increase or decrease the cost of or time for performance of the Work.

8.1.2 If at any time Design-Build Firm believes that acts or omissions of the County constitute a change to the Work, Design-Build Firm shall submit a written notice to the Project Manager explaining in detail the basis for the change request. Design-Build Firm's written notice must be furnished within seven (7) calendar days of the commencement of the event giving rise to the claim or Design-Build Firm's knowledge of the claim, and the notice shall state the general nature and cause of the claim. Thereafter, within twenty (20) calendar days after the termination of the event giving rise to the claim or Design-Build Firm's knowledge of the claim, Design-Build Firm shall submit written notice of the extent of the claim with supporting information and documentation to the Project Manager and County. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME OR CONTRACT PRICE SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.** Pending final resolution of any such claim request, Design-Build Firm shall diligently proceed with performance of the Work under this Contract regardless of any dispute concerning performance of the Work or the amount Design-Build Firm is to be paid for such Work.

8.2 Changes in the Contract Time

8.2.1 The Contract Time will be extended by Change Order in an amount equal to time lost on critical Work items due to delays beyond the control of and through no fault or negligence of Design-Build Firm if a claim for an extension is submitted in accordance with Section 8.1.2 above.

8.2.2 If Design-Build Firm is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as a direct result of unusually adverse weather conditions not reasonably anticipated, or any other causes beyond Design-Build Firm's reasonable control and not attributable to Design-Build Firm or Design-Build Firm's Subcontractors' actions or failure to act, then the date for achieving Substantial Completion of the Work may be extended for such reasonable time as the County may determine. An extension of Contract Time shall be Design-Build Firm's sole and exclusive remedy for delay unless the delay is solely caused by fraud, bad faith or active interference on the part of the County or its representatives. In no event shall Design-Build Firm be compensated for interim delays that do not extend the Contract Time.

8.2.3 Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for a change in the Contract Time pursuant to paragraph 8.1.2 above. Time extensions are justified only when rain, other inclement weather conditions, or related adverse soil conditions result in Design-Build Firm's inability to work at least fifty percent (50%) of the normal workday on controlling items of Work identified on the accepted schedule or updates to that schedule.

8.2.4 Design-Build Firm shall, at no additional cost to the County, take all precautions necessary to secure the Project Jobsite from any damage that may be caused by all threatened storm events, regardless of whether the County has given notice of same.

8.3 Changes in the Contract Price

8.3.1 In connection with any claim by Design-Build Firm against the County for compensation in excess of the Contract Price, any liability of the County for Design-Build Firm's costs shall be strictly limited to direct costs or indirect costs related to the Project incurred by Design-Build Firm and shall in no event include consequential damages of Design-Build Firm.

8.3.2 Any change in the Contract Price resulting from a Change Order shall be determined as follows:

- a) By mutual acceptance of a lump sum increase or decrease in costs. Upon the Project Manager's request, Design-Build Firm shall furnish a detailed estimate of increased or decreased costs, together with cost breakdowns and other support data as the Project Manager may reasonably request;
- b) By Unit Prices stated in the Contract Documents, or subsequently agreed upon; or
- c) By a manner or method mutually agreed by the County and Design-Build Firm.

8.3.3 If no mutual agreement occurs between the County and Design-Build Firm, then the change in the Contract Price, if any, shall than be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, Design-Build Firm shall present, in such form and with such content as the County or the Project Manager requires, an itemized accounting of such expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, unemployment insurance, fringe benefits required by a pre-existing Contract or by custom, and workers' compensation insurance, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes paid by Design-Build Firm that are directly attributable to the changed Work. In no event shall any expenditure or savings associated with Design-Build Firm's home office or other non-Project related overhead expenses be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the County, payments shall be made to Design-Build Firm based on the Project Manager's recommendation for payment.

8.3.4 Costs which will not be allowed or paid in Change Orders or other claims under this Contract include, but are not limited to, the costs of preparing or reviewing change request/claims or proposed Change Orders, change request/claim consulting costs; lost revenues; lost profits; lost income or earnings; interest cost of any type other than those mandated by statute; rescheduling costs; lost earnings; loss of other business; or the costs of Design-Build Firm representatives visiting the Jobsite or participating in meetings with the County. The County shall not be liable to Design-Build Firm for claims of third parties, including Subcontractors, unless and until liability of Design-Build Firm has been established therefore in a court of competent jurisdiction.

8.4 Acceptance of Change Orders

Design-Build Firm's written acceptance of a Change Order shall constitute a final and binding Contract to the provisions thereof and a waiver of all claims in connection therewith, whether direct, indirect, or consequential in nature.

8.5 Notice to Sureties

Design-Build Firm shall notify and obtain the timely consent and approval of Design-Build Firm's surety with reference to all Change Orders if such notice, consent or approval is required by the County, Design-Build Firm's surety, or by law. Design-Build Firm represents and warrants to County that Design-Build Firm is solely liable and responsible to so notify and obtain any such consent or approval.

8.6 Differing Site Conditions

If during the course of the Work, Design-Build Firm encounters (1) subsurface or concealed conditions at the Project's Jobsite that differ materially from those shown in the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in this Contract; or (2) unknown physical conditions of the Project's Jobsite, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in this Contract, then Design-Build Firm, without disturbing the conditions

and before performing any Work affected by such conditions, shall, within forty-eight (48) hours of their discovery, notify the Project Manager in writing of the existence of the aforesaid conditions. The Project Manager shall, within two (2) business days after receipt of Design-Build Firm's written notice, investigate the site conditions identified by Design-Build Firm. If, in the sole opinion of the Project Manager, the conditions do materially so differ and cause an increase or decrease in Design-Build Firm's cost of, or the time required for, the performance of any part of the Work, whether or not charged as a result of the conditions, the Project Manager may recommend an equitable adjustment to the Contract Price, or the Contract Time, or both. If Project Manager and Design-Build Firm cannot agree on an adjustment in the Contract Price or Contract Time, the adjustment shall be referred to the Assistant Director of Purchasing and Contracts for determination in accordance with the provisions of Paragraph 1.5. No request by Design-Build Firm for an equitable adjustment to this Contract under this provision shall be allowed unless Design-Build Firm has given written notice to the Project Manager in strict accordance with the provisions of this Article. **NO REQUEST FOR AN EQUITABLE ADJUSTMENT OR CHANGE TO THE CONTRACT PRICE OR CONTRACT TIME FOR DIFFERING SITE CONDITIONS SHALL BE ALLOWED IF MADE AFTER THE DATE CERTIFIED BY THE PROJECT MANAGER AS THE DATE OF SUBSTANTIAL COMPLETION.**

The failure by Design-Build Firm to provide written notice as provided in this Paragraph 8.6 shall constitute a waiver by Design-Build Firm of any Claim arising out of or relating to such concealed or unknown condition.

ARTICLE IX UNCOVERING WORK, STOPPING WORK, AND ACCEPTING DEFECTIVE OR NONCONFORMING WORK

9.1 Uncovering Work

9.1.1 No Work or portion of Work shall be covered until inspected by the County as required by the Contract Documents. If any of the Work is covered contrary to the request or direction of the County or the Project Manager or contrary to the requirements of the Contract Documents, Design-Build Firm shall, upon written request, uncover it for the Project Manager's inspection and subsequently cover the Work in accordance with the Contract Documents without adjustment to the Contract Time or Contract Price. The provisions and obligations set forth herein shall apply even if the County ultimately determines (after uncovering and inspection) that the underlying Work in question conforms to the requirements of the Contract Documents.

9.1.2 Should the County wish to either (i) re-inspect a portion of the Work that has been covered by Design-Build Firm in compliance with Paragraph 9.1.1, above, or (ii) inspect a portion of the Work that has been covered by Design-Build Firm which is not required by the Contract Documents to be observed or inspected prior to its being covered and which the County did not specifically request to observe prior to its being covered, Design-Build Firm shall uncover the applicable portion of the Work upon written request. If the County determines that the Work uncovered conforms to the requirements of the Contract Documents, then the County will pay the costs of uncovering and replacement of the cover through a Change Order and will adjust the Contract Time by Change Order if the uncovering and replacement Work extends the most current Substantial Completion or Final Completion date, as applicable. If, however, the County determines that the Work uncovered does not conform to the requirements of the Contract Documents, then Design-Build Firm shall pay the costs of uncovering and replacement and shall not be entitled to an adjustment of the Contract Price.

9.2 Right to Stop Work

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

9.3 County May Accept Defective or Nonconforming Work

9.3.1 If the County chooses to accept defective or nonconforming Work, the County may do so. In such events, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Work had it not been constructed in such manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the County for its acceptance of defective or nonconforming Work, Design-Build Firm shall, pay the County such remaining compensation for accepting defective or nonconforming Work.

9.3.2 Failure on the part of the County to reject defective, non-conforming or unauthorized Work shall not release Design-Build Firm from its contractual obligations, be constructed to mean acceptance of such Work or material by the County, or, after Final Completion, bar the County from recovering damages or obtaining such other remedies as may be permitted by law.

9.3.3 No adjustment in the Contract Time or Contract Price will be allowed because of delays in the performance of the Work as a result of correcting defective, non-conforming or unauthorized Work.

ARTICLE X CONTRACT SUSPENSION AND TERMINATION

10.1 Suspension

The County may, by written notice, order Design-Build Firm to suspend, delay or interrupt Work, in whole or in part, for a period of time as the County may determine. If such suspension delays Design-Build Firm's ability to meet the authorized Contract Time, Design-Build Firm will be granted an extension of time as reasonably agreed by both parties. Design-Build Firm shall not be entitled to an adjustment to the Contract Time to the extent that performance is, was or would have been so suspended, delayed or interrupted by another cause, act or omission for which Design-Build Firm is responsible. Notwithstanding anything to the contrary in this Contract and, in the event any such suspension exceeds ninety (90) days, Design-Build Firm may, upon ten (10) calendar days written notice to the County, terminate performance under this Contract and recover from the County an equitable adjustment in accordance with Section 8.3 above.

10.2 Termination

10.2.1 The County may by written notice to Design-Build Firm terminate the Work under this Contract in whole or in part at any time for the County's convenience or for the default of Design-Build Firm.

10.2.1.1 The County may terminate this Contract, in whole or in part, for its convenience upon thirty (30) calendar days written notice to the Design-Build Firm. If the termination is for the convenience of the County, an equitable adjustment in the compensation to be paid to Design-Build Firm shall be made based upon the cost for completed Work, Work in progress, and the substantiated, reasonable and actually incurred costs associated with termination. No amount shall be allowed for anticipated profit or unperformed work.

10.2.1.2 The Design-Build Firm may terminate this Contract for any reason up to sixty (60) calendar days written notice, provided that any outstanding Work is completed by Design-Build Firm, or Design-Build Firm's Subcontractors. Design-Build Firm further agrees to cooperate and assist the County, upon request, in order to complete any Work under this Project. In such event, the County shall compensate Design-Build Firm as mutually agreed in writing for any such Work after termination.

10.2.1.3 The County may terminate this Contract, in whole or in part, for cause (or "default"). In the event of a termination by the County for cause, Design-Build Firm shall have ten (10) calendar days from receipt of notice to remedy deficiencies identified in said notice. If Design-Build Firm fails to remedy such deficiencies to the satisfaction of the County within the stated time period, the County may take over and prosecute the Work to completion. In such case, Design-Build Firm shall be liable to the County for all reasonable additional costs incurred by the County in completion of the Work.

10.2.2 Upon receipt of such termination notice Design-Build Firm shall immediately stop all Work and shall immediately cause any and all of its Subcontractors and material suppliers at any tier, to immediately stop all work, leaving the construction Site in a safe and secured condition. Design-Build Firm shall not be paid for any work performed or costs incurred after the termination date that reasonably could have been avoided. The County may direct Design-Build Firm to assign Design-Build Firm's right, title and interest under terminated orders or subcontracts to its designee.

10.2.3 Design-Build Firm shall not remove from the construction Jobsite any materials, equipment, plant or tools that have been paid for by County pursuant to this Contract. Design-Build Firm hereby grants the County a free and unimpeded right of access to Design-Build Firm's facilities, which shall survive any termination of the Contract, for the purpose of permitting the County to take control of and remove any Work, including but not limited to any Work for which title has vested in the County.

10.2.5 For purposes of this Termination provision, Design-Build Firm shall be deemed in default if Design-Build Firm (1)

persistently or repeatedly refuses or fails to perform the Work in a timely manner, (2) fails to supply enough properly skilled Workers, supervisory personnel or proper equipment or materials, (3) fails to make prompt payment to Subcontractors, or for materials or labor, (4) becomes insolvent or becomes the subject of voluntary or involuntary bankruptcy proceedings, (5) persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or (6) breaches or violates a material provision of this Contract. If the termination is attributable to the default of Design-Build Firm, the County shall have the right, without prejudice to any other right or remedy, to take possession of the construction Jobsite and of all materials, equipment, tools, construction equipment and machinery thereon owned by Design-Build Firm and may finish the Work by whatever methods it may deem expedient. In such case, Design-Build Firm shall not be entitled to receive any further payment until the Work is finished.

10.2.6 If the unpaid balance of the Contract Price less any liquidated damages due under this Contract, exceeds the cost of finishing the Work, including compensation for the Project Manager's additional services and expenses made necessary thereby, Design-Build Firm shall pay the difference to the County. This obligation for payment shall survive the termination of the Contract.

10.2.7 If, after termination by the County for Design-Build Firm's default, it is determined by a Court of competent jurisdiction that Design-Build Firm was not in default, or that the delay was excusable, the rights and obligations of the parties, including adjustment of the Contract Price, will be the same as if the termination had been issued for the convenience of the County, as provided under Paragraph 10.2.1.2 above.

ARTICLE XI STANDARD OF CARE, WARRANTY AND INDEMNITY

11.1 Standard of Care

11.1.1 Design-Build Firm represents that all performed or furnished Design Services shall meet the standard of care ordinarily used by members of the subject profession, having experience with projects similar in scope and complexity and at a similar time and locality. Design-Build Firm further represents and warrants that it is fully experienced and properly qualified, licensed, and financed to perform the Design Services under this Contract and that it shall continue to maintain all licenses and approvals required to conduct its business and that it shall conduct its business activities in a reputable manner at all times.

11.2 Warranty

11.2.2 Design-Build Firm warrants to the County that all labor furnished to progress the Work under this Contract shall be competent to perform the tasks undertaken and that the product of such labor shall yield only first-class results and that all materials and equipment furnished under this Contract shall be of good quality, free from faults and defects and in strict conformance with the Contract Documents.

11.2.2 Design-Build Firm warrants all Design Build Work, including all completed materials, equipment, systems and structures comprising the Project shall be free of defects in design, materials and workmanship for a period of one year (or the period of time in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) from and after the date of Final Completion. Design-Build Firm shall within ten (10) calendar days after being notified in writing by the County of any defect in the Work or non-conformance of the Work (Warranty Work), commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Design-Build Firm shall act sooner as requested by the County in response to an emergency. In addition, Design-Build Firm shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its Warranty Work or which becomes damaged in the course of repairing or replacing Warranty Work. For any Work so corrected, Design-Build Firm's obligation hereunder to correct Warranty Work shall be reinstated for an additional one-year period, commencing with the date of acceptance of such corrected Work.

11.2.3 Design-Build Firm shall perform such tests as the County may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract Documents. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Design-Build Firm.

11.2.4 All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Design-Build Firm for the benefit of the County, regardless

of whether or not such warranties and guarantees have been transferred or assigned to the County by separate Contract and Design-Build Firm agrees to enforce such warranties and guarantees, if necessary, on behalf of the County.

11.2.5 In the event that Design-Build Firm fails to perform its obligations under this Warranty Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the County, the County shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Design-Build Firm's sole expense. Design-Build Firm shall be obligated to fully reimburse the County for any expenses incurred hereunder upon demand.

11.3 Indemnity

11.3.1 Design-Build Firm shall indemnify and hold harmless the County and its officers and employees ("Indemnified Party"), from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Design-Build Firm and persons employed or utilized by Design-Build Firm in the performance of this Contract.

11.3.2 To the extent permitted by, and in accordance with Section 725.06 of the Florida Statutes, Design-Build Firm further agrees that "damages, losses and costs", includes fines, citations, court judgments, insurance claims, restoration costs or other liability, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Design-Build Firm and persons employed or utilized by Design-Build Firm in the performance of this Contract.

11.3.3 To the extent permitted by, and in accordance with Section 725.06 of the Florida Statutes, for purposes of indemnity, the "persons employed or utilized by Design-Build Firm" shall be construed to include, but not be limited to, Design-Build Firm, its staff, employees, subcontractors, all deliverers, suppliers, furnishers of materials or services or anyone acting for, on behalf of, or at the request of Design-Build Firm. In accordance with Section 725.06, Florida Statutes, the Design-Build Firm's indemnification obligation shall not exceed the sum of (a) all costs reasonably incurred by the County or any person or entity acting on behalf of the County to complete or correct the Work; (b) an amount equal to 100% of the Contract Price up to \$100,000,000; and (c) any amounts paid by or on behalf of Design-Build Firm that are covered by insurance proceeds from insurance policies required under the Contract Documents.

11.3.4 In Claims against any person or entity indemnified hereunder by an employee of Design-Build Firm, any Subcontractor, or subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 11.4 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Design-Build Firm or any Subcontractor or subcontractor under any workers' compensation acts, disability benefits acts or other employee benefit acts.

11.3.5 Design-Build Firm's indemnity and hold harmless obligations hereunder shall extend to all Claims against the County by any third party or third-party beneficiary of this Contract and all liabilities, damages, losses and costs related thereto.

11.3.6 This indemnification will not be valid in the instance where the loss is caused by the gross negligence, or willful, wanton or intentional misconduct of any Indemnified Party.

11.3.7 If any provision(s), or portion(s) of a provision(s) of this Section, or the application thereof to any person or circumstance shall, to any extent, be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provision(s), or part of the provision(s), shall not in any way be affected or impaired thereby; and shall be interpreted to the fullest extent possible to be enforceable and to give effect to the intent manifested by the provision(s), or portion(s) thereof, held invalid, illegal or unenforceable.

11.3.8 Design-Build Firm shall further indemnify and hold harmless the County its officers and employees from and against all Claims arising out of any infringement of patent rights or copyrights incident to the operation or use of the Work, or any part thereof, or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents and shall defend such Claims in connection with any alleged infringement of such rights. Design-Build Firm agrees to keep the County informed of all developments in the defense of all such actions.

11.3.9 The indemnification provisions of this Section 11.4 shall survive expiration or termination of this Contract.

11.4 Indemnification and Subcontracts

Any and all Subcontracts of any tier entered into by the Design-Build Firm to design or build the Project shall require Subcontractors to release the County and hold it harmless to the same extent required in Section 11.4 "Indemnity". The release obligations set forth in the Subcontracts shall name the County as an express third-party beneficiary with rights of enforcement of such obligation and shall entitle the County to succeed to Design-Build Firm's rights under such Subcontract. The County shall not, however, be construed as a party to any Subcontract related to the Project nor shall the County in any way be responsible for any or all Claims of any nature whatsoever arising or which may arise from any such Subcontracts.

ARTICLE XII INSURANCE AND BONDS

12.1 Design-Build Firm's Insurance Requirements

12.1.1 All insurance policies shall be satisfactory to the County and be issued by companies authorized and duly licensed to transact business in the State of Florida. Design-Build Firm shall furnish proof of insurance to the County prior to execution of this Contract. No Work shall commence under this Contract until Design-Build Firm has obtained all insurance coverages required under this Section. Certificates of insurance shall clearly indicate Design-Build Firm has obtained insurance of the type, amount, and classification as required by this Contract. Required insurance coverage shall be maintained in force, including coverage for Additional Insureds, until Final Completion of all Work including Warranty Work unless otherwise provided in the Contract Documents or agreed in writing by Design-Build Firm and the County.

12.1.2 No less than ten (10) days written notice shall be provided to the County prior to cancellation, non-renewal or any material change of required insurance policies. Yearly renewal certificates shall be provided to the County within thirty (30) days of expiration of the current policy.

12.1.3 The types and amounts of insurance required under this Contract do not in any way limit the liability of Design-Build Firm including under any warranty or indemnity provision of this Contract or any other obligation whatsoever Design-Build Firm may have to the County or others. Nothing in this Contract limits Design-Build Firm to the minimum required insurance coverages found in this Article XII.

12.2 Additional Insured Endorsements and Certificate Holder

The term "Additional Insured", as used in this Contract, shall mean St. John's County, its elected officials, officers, employees, agents and representatives. Certificates of insurance shall specifically name each Additional Insured for all policies of insurance except Workers' Compensation and Professional Liability. A copy of the endorsement showing the required coverages must accompany the certificate of insurance.

Certificate Holder Address: St. Johns County, a political subdivision of the State of Florida
500 San Sebastian View
St. Augustine, FL 32084
Attn: Purchasing

12.3 Workers Compensation & Employers Liability

Design-Build Firm shall procure and maintain during the life of this Contract, adequate Workers' Compensation Insurance and Employer's Liability in at least such amounts as is required by law for all of its employees per Florida Statute 440.02 as now or hereafter amended.

12.4 Commercial General Liability

Design-Build Firm shall procure and maintain during the life of this Contract, Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate, including bodily injury (including wrongful death), property damage, products, personal & advertising injury, and completed operations. This insurance must provide coverage for all Claims that may arise from the services and/or operations completed under this Contract, whether such services or operations are by Design-Build Firm or anyone directly or indirectly employed by them. Such insurance(s) shall also be primary and non-contributory with regard to insurance carried by the Additional Insureds.

12.5 Automobile Liability

Design-Build Firm shall procure and maintain during the life of this Contract, Comprehensive Automobile Liability Insurance with minimum limits of \$2,000,000 combined single limit for bodily injury and property damage liability and insuring liability arising out of or in any way related directly or indirectly to the ownership, maintenance or use of any owned, non-owned or rented/hired automobiles.

12.6 Professional Liability

Design-Build Firm shall procure and maintain, during the life of this Contract, Professional Liability or Errors and Omissions Insurance with minimum limits of \$1,000,000. Design-Build Firm shall procure and maintain a four (4) year tail coverage upon cancellation or inability to continue with Professional Liability insurance as required herein. Design-Build Firm's professional liability policy should not have an exclusion for environmental compliance management or construction management professionals.

In the event that Design-Build Firm employs professional engineering or land surveyor services for performing field engineering or preparing design calculations, plans, and specifications, Design-Build Firm shall require the retained engineers and land surveyors to carry professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Contract.

12.7 Excess Liability

Prior to commencing Phase 2 Final Design and Construction, Design-Build Firm shall procure and maintain Excess Liability insurance in an amount not less than \$5,000,000.00 per occurrence and \$5,000,000.00 per aggregate limit, applying on a primary, non-contributory basis irrespective of any other insurance, whether collectible or not, and applying in excess of the underlying Employers Liability, Commercial General Liability, and Commercial Automobile Liability insurance coverages. This policy shall be written on an "occurrence" basis and shall be endorsed to name the County as an "Additional Insured".

12.8 Other Requirements

The required insurance limits identified in Sections 12.4 and 12.5 above may be satisfied by a combination of a primary policy and/or Umbrella or Excess Liability Insurance policy. Design-Build Firm shall require each lower-tier subcontractor to comply with all insurance requirements appropriate for its scope of work, and any deficiency shall not relieve Design-Build Firm of its responsibility herein. Upon written request, Design-Build Firm shall provide County with copies of lower-tier subcontractor certificates of insurance.

Providing and maintaining adequate insurance coverage is a material obligation of Design-Build Firm. County has no obligation or duty to advise Design-Build Firm of any non-compliance with the insurance requirements contained in this Section. If Design-Build Firm fails to obtain and maintain all of the insurance coverages required herein, Design-Build Firm shall indemnify and hold harmless the Additional Insureds from and against any and all Claims that would have been covered by such insurance had Design-Build Firm complied with its obligations herein.

County reserves the right to adjust the above minimum insurance requirements or require additional insurance coverages to address other insurable hazards.

12.9 Payment and Performance Bonds

Design-Build Firm shall execute, furnish the County with, and record in the public records of St. John's County, a Payment and Performance Bond in accordance with the provisions of Sections 255.05 and 287.0935 Florida Statutes, in an amount no less than the Contract Price. Such Payment and Performance Bond shall be conditioned upon the successful completion of all work, labor, services, equipment and materials to be provided and furnished hereunder (including the costs of design and non-construction services), and the payment of all subcontractors, materialmen, and laborers. Said bond shall be subject to the approval of the Board of County Commissioners of St. John's County, Florida. In accordance with Section 255.05, F.S., the County may not make a payment to Design-Build Firm until Design-Build Firm has provided the County a certified copy of the recorded bond.

12.11 Warranty Bond

As a condition to the release of Payment and Performance Bonds provided by Design-Build Firm pursuant to Section 12.10 above, Design-Build Firm shall furnish a Warranty Bond in the amount of ten percent (10%) of the Contract Price, guaranteeing the faithful performance of its obligations under the Contract Documents after Final Completion, including payment of claims by Subcontractors. Said bond shall be subject to the approval of the Board of County Commissioners of

St. John's County, Florida and shall remain in effect until the expiration of Design-Build Firm's warranty obligations hereunder, not to exceed one (1) year from the scheduled date of Final Completion or until County elects in writing to release such Warranty Bond, whichever occurs first.

ARTICLE XIII DELIVERY OF DOCUMENTS

Except for confidential documents and Notices that must be delivered by the delivery methods described under Section 14.26 below, the Design-Build Firm agrees all Submittals, Work Product and other documents required by the Contract Documents shall be submitted to the County electronically in any standard interchange software and file naming/format which the County may reasonably request to facilitate the administration and enforcement of this Contract. The cost for preparation and submittal of the foregoing documents is included in the Contract Price.

All Design-Build Firm Submittals and Work Product of professional engineering plans, shop drawings of designed components, calculations, and other documents prepared by the Design-Build Firm or the Design-Build Firm's subcontractor(s) and submitted to the County under the terms of this Contract shall be stamped and signed with the date of signing clearly indicated by a Professional Engineer currently licensed in the State of Florida. Electronic seals and signatures must comply with the Electronic Signature Act of 1996 and State of Florida licensing requirements, as applicable.

ARTICLE XIV MISCELLANEOUS

14.1 Examination of Design-Build Firm's Records

The County or its authorized representative shall, until the expiration of six (6) years after final payment under this Contract, have access to, and the right to examine any directly pertinent books, documents, papers, records correspondence, receipts, subcontracts, purchase orders, and other data of Design-Build Firm involving transactions relating to this Contract, and to make copies, excerpts and transcriptions thereof. If any such examination reveals that Design-Build Firm has overstated any component of the Contract Price, Change Order, Claim, or any other County payment obligation arising out of this Contract, then Design-Build Firm shall, at the election of the County, either immediately reimburse to the County or offset against payments otherwise due Design-Build Firm, the overstated amount plus interest. The foregoing remedy shall be in addition to any other rights or remedies the County may have.

14.2 Backcharges

Upon the County's notification to undertake or complete unperformed Construction Work such as cleanup or to correct defective or non-conforming services, equipment, or material (Backcharge Work), if Design-Build Firm states or by its actions indicates it is unable or is unwilling to immediately proceed and/or complete the Backcharge Work in an agreed time; the County may perform such Backcharge Work by the most expeditious means available and backcharge Design-Build Firm for any and all costs thereby incurred by the County.

The County shall separately invoice or deduct and retain from payments otherwise due to Design-Build Firm the costs for Backcharge Work. The County's right to backcharge is in addition to any and all other rights and remedies provided in this Contract or by law. The County's performance of the Backcharge Work shall not relieve Design-Build Firm of any of its responsibilities under this Contract and Design-Build Firm shall be responsible for the Backcharge Work as if it were its own.

14.3 Applicable Law

Design-Build Firm and the Work must comply with all Applicable Law and the requirements of any applicable grant agreements.

14.4 Governing Law & Venue

The Contract shall be governed by the laws of the State of Florida. Venue for any administrative and/or legal action arising under the Contract shall be St. Johns County, Florida.

14.5 Arbitration

The County shall not be obligated to arbitrate or permit any arbitration binding on the County under any of the Contract Documents or in connection with this Contract in any manner whatsoever.

14.6 Disputes

If any dispute between the County and Design-Build Firm under this Contract arises over whether any work requested by the County is within the scope of the contracted Services and such dispute cannot be resolved by good faith negotiation between the Authorized Representatives of each party, such dispute shall be promptly referred to County's Assistant Director of Purchasing for resolution. The County's Assistant Director of Purchasing shall render a written decision on any such referred claim or dispute, whose decision shall be final and binding on the Parties. During the pendency of any dispute, Design-Build Firm shall promptly perform the disputed Services.

14.7 Enforcement Costs

If any legal proceeding, lawsuit, or action is instituted in connection with any dispute, breach, default, misrepresentation or controversy arising out of this Contract or the enforcement of any right hereunder, the prevailing party will be entitled to recover, in addition to actual costs, such sums as the court may adjudge reasonable as attorney fees, including fees on any appeal.

14.8 Assignment and Arrears

14.8.1 Neither the County nor the Design-Build Firm shall assign, transfer, or encumber its interest in this Contract without the written consent of the other Party. Any assignment, transfer, encumbrance or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Contract, and permit the non-assigning Party to immediately terminate this Contract, in addition to any other remedies available to the non-assigning Party at law or in equity. County reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to the County to reasonably compensate it for the performance of any such due diligence.

14.8.2 The Design-Build Firm shall not pledge the County's credit, or make it a guarantor of payment, or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Design-Build Firm further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

14.9 Severability

If a court deems any provision of the Contract void, invalid or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

14.10 Section Headings

The section and other headings contained in this Contract are for reference purposes only and shall not affect the meaning or interpretation of this Contract.

14.11 Disclaimer of Third-Party Beneficiaries

This Contract is solely for the benefit of County and Design-Build Firm and no right or cause of action shall accrue to or for the benefit of any third party not a formal party hereto. Nothing in this Contract, expressed or implied, is intended or shall be construed to confer upon or give any person or entity other than County and Design-Build Firm, any right, remedy, or Claim under or by reason of this Contract or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon County and Design-Build Firm.

14.12 Waiver; Course of Dealing

The delay or failure by the County to exercise or enforce any of its rights or remedies under this Contract shall not constitute or be deemed a waiver of the County's right thereafter to enforce those rights or remedies, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The conduct of the parties to this Contract after the Effective Date shall not be deemed a waiver or modification of this Contract.

14.13 No Waiver of Sovereign Immunity

Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance and obligations under this Contract and shall be fully binding until such time as any proceeding brought on account of this Contract is barred by any applicable statute of limitations.

14.14 Execution in Counterparts

This Contract may be executed in counterparts, each of which shall be an original document, and all of which together shall constitute a single instrument. The parties may deliver executed counterparts by e-mail transmission, which shall be binding. In the event this Contract is executed through a County-approved electronic signature or online digital signature service (such as DocuSign), such execution shall be valid, effective and binding upon the party so executing. Execution and delivery of an executed counterpart of this Contract and/or a signature page of this Contract by electronic image scan transmission (such as a "pdf" file) or through a County approved electronic signature service will be valid and effective as delivery of a manually executed counterpart of this Contract.

14.15 Entire Contract

This Contract, together with the Contract Documents for the Work, constitutes the entire Contract between County and Design-Build Firm relating to the subject matter hereof and supersedes all prior or contemporaneous Contracts, negotiations, discussions and understandings, oral or written. This Contract may not be amended or modified except in writing signed by both parties.

14.16 Survival

The provisions of the Contract Documents which by their nature survive termination of the Contract, including without limitation all warranties, indemnities, insurance, payment obligations, and the County's right to audit Design-Build Firm's books and records, shall in all cases survive the expiration or earlier termination of this Contract.

14.17 Scrutinized Companies Lists

Section 287.135 of the Florida Statutes prohibits agencies from contracting with companies for goods or services that are on the Scrutinized Companies that Boycott Israel List, or with companies that are engaged in a boycott of Israel, and from contracting with companies for goods or services of \$1,000,000 or more that are on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are engaged in business operations in Cuba or Syria. The lists are created pursuant to §215.473 and §215.4725, F.S. By execution of this Contract, Design-Build Firm certifies that it is not listed on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria, and understands that pursuant to §287.135, F.S., the submission of a false certification may subject Design-Build Firm to civil penalties, attorney's fees, and/or costs. In accordance with §287.135, F.S., the County may terminate this Contract if a false certification has been made, or the Design-Build Firm is subsequently placed on any of these lists, or engages in a boycott of Israel or is engaged in business operations in Cuba or Syria.

14.18 Employment Eligibility and Mandatory Use of E-Verify

As a condition precedent to entering into this Contract, and in accordance with section 448.095, F.S., Design-Build Firm and its subcontractors shall register with and use the E-Verify system to verify the work authorization status of all employees hired on or after January 1, 2021.

- a. Design-Build Firm shall require each of its subcontractors to provide Design-Build Firm with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Design-Build Firm shall maintain a copy of such affidavit for the duration of this Contract.
- b. The County, Design-Build Firm, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated section 448.09(1), F.S. or these provisions regarding employment eligibility shall terminate the contract with the person or entity.
- c. The County, upon good faith belief that a subcontractor knowingly violated these provisions regarding employment eligibility, but Design-Build Firm otherwise complied, shall promptly notify Design-Build Firm and Design-Build Firm shall immediately terminate the contract with the subcontractor.
- d. The County and Design-Build Firm hereby acknowledge and mutually agree that, a contract terminated pursuant to these provisions regarding employment eligibility is not a breach of contract and may not be considered as such. Any contract terminated pursuant to these provisions regarding employment eligibility may be challenged in accordance with section 448.095(2)(d), F.S.

- e. Design-Build Firm acknowledges that, in the event that the County terminates this Contract for Design-Build Firm's breach of these provisions regarding employment eligibility, then Design-Build Firm may not be awarded a public contract for at least one (1) year after such termination. Design-Build Firm further acknowledges that Design-Build Firm is liable for any additional costs incurred by the County as a result of the County's termination of this Contract for breach of these provisions regarding employment eligibility.
- f. Design-Build Firm shall incorporate in all subcontracts made pursuant to this Contract the provisions contained herein regarding employment eligibility.

14.19 Equal Employment Opportunity

During the performance of this Contract, Design-Build Firm agrees as follows:

14.19.1 Design-Build Firm will not discriminate against any employee or applicant for employment because of race, color, religion, disability, sex, age, national origin, ancestry, marital status, sexual orientation, gender identify or expression, familial status or genetic information. Design-Build Firm will take affirmative action to ensure that applicants and employees are treated during employment without regard to their race, color, religion, disability, sex, age, national origin, ancestry, marital status, sexual orientation, gender identity or expression, familial status, genetic information or political affiliation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertisement, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Design-Build Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

14.19.2 Design-Build Firm will, in all solicitations or advertisements for employees placed for, by, or on behalf of Design-Build Firm, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, sexual orientation, gender identity or expression, familial status, or genetic information.

14.19.3 Design-Build Firm will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Design-Build Firm's legal duty to furnish information.

14.19.4 Design-Build Firm will send to each labor union or representatives of workers with which it has a collective bargaining Contract or other contract or understanding, a notice to be provided by the County, advising the labor union or workers' representative of Design-Build Firm's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

14.19.5 Design-Build Firm will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

14.19.6 Design-Build Firm will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the County and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

14.19.7 In the event of Design-Build Firm's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part and Design-Build Firm may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

14.19.8 Design-Build Firm will include the provisions of paragraphs 14.19.1 through 14.19.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Design-Build Firm will take such action with respect to any subcontractor or vendor as may be directed to the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Design-Build Firm becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Design-Build Firm may request the United States to enter into such litigation to protect the interest of the United States.

14.20 Public Records

14.20.1 Design-Build Firm shall comply and shall require all of its Subcontractors to comply with the State of Florida's Public Records Statute (Chapter 119), specifically to:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the Services;
- (2) Upon request from the County's custodian of public records, provide the County 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 Applicable Law;
- (3) Ensure that public records related to this Contract 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 Contract and following expiration of this Contract, or earlier termination thereof, if Design-Build Firm does not transfer the records to the County; and
- (4) Upon completion of this Contract, or earlier termination thereof, transfer, at no cost, to the County all public records in possession of Design-Build Firm or keep and maintain for inspection and copying all public records required by the County to perform the Work.

14.20.2 If Design-Build Firm, upon expiration of this Contract or earlier termination thereof:

i) transfers all public records to the County, Design-Build Firm shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements; and ii) keeps and maintains public records, Design-Build Firm shall meet all Applicable Law and requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the County's information technology systems.

14.20.3 Failure by Design-Build Firm to comply with the requirements of this section shall be grounds for immediate, unilateral termination of this Contract by the County.

IF DESIGN-BUILD FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (904) 209-0805, PUBLICRECORDS@SJCFL.US, 500 SAN SEBASTIAN VIEW, ST. AUGUSTINE, FLORIDA 32084

14.21 Confidentiality

Subject to Chapter 119, Florida Statutes (Public Records Law), Design-Build Firm shall keep all information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the County, or at its expense, confidential. Such information shall not be disclosed to any other party, directly or indirectly, without the County's prior written consent, unless required by a lawful order.

14.22 Anti-Bribery

Design-Build Firm and its Subcontractors shall at all times during the term of this Contract comply with all anti-bribery and

corruption laws that are applicable to the performance of this Contract. Design-Build Firm represents that it has not, directly or indirectly, taken any action which would cause it to be in violation of Chapter 838 of the Florida Statutes. Design-Build Firm shall immediately notify the County of any violation (or alleged violation) of this provision.

14.23 Truth-In-Negotiation Representation

By execution of this Contract, Design-Build Firm hereby certifies that, in accordance with Section 287.055(5)(a), Florida Statutes, the wage rates and other factual unit costs supporting the compensation under this Contract are accurate, complete and current as of the date of entering into this Contract. The Parties agree that the County may adjust the original Contract Price and any additions thereto 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.

14.24 Contingency Fees

The Design-Build Firm warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Design-Build Firm to solicit or secure this Contract 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-Build Firm, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. Failure by Design-Build Firm to comply with the requirements of this section shall be grounds for immediate, unilateral termination of this Contract by the County.

14.25 Conflict of Interest

The Design-Build Firm 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-Build Firm further represents that no person having any interest shall be employed for said performance.

The Design-Build Firm shall promptly notify the County 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-Build Firm'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-Build Firm may undertake and request an opinion of the County, whether such association, interest, or circumstance constitutes a conflict of interest if entered into by the Design-Build Firm.

The County agrees to notify the Design-Build Firm of its opinion by certified mail within 30 days of receipt of notification by the Design-Build Firm. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Design-Build Firm, the County shall so state in the notification and the Design-Build Firm 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 County by the Design-Build Firm under the terms of this Contract.

14.26 Written Notice

Any and all notices, requests, consents, approvals, demands, determinations, instructions, and other forms of written communication under this Contract shall be validly given when delivered as follows:

- i. Hand delivered to Design-Build Firm's Authorized Representative or hand delivered during normal business hours and addressed as shown below, or
- ii. Delivered by U.S. Mail, electronic mail or commercial express carrier, (postage prepaid, delivery receipt requested), to the following addresses:

St. Johns County, FL
500 San Sebastian View
St. Augustine, FL 32084
Attn: Jaime Locklear, Asst. Director,
Purchasing & Contracts
Email: jlocklear@sjcfl.us

SUPERIOR Construction Company Southeast, LLC
7072 Business Park Blvd. N
Jacksonville, FL 32256
Attn: Brian McGarity,
Email Address: bmcgarity@superiorconstruction.com

With a copy to:
St. Johns County

Office of the County Attorney
500 San Sebastian View
St. Augustine, FL 32084
Email Address: dmigut@sjcfl.us

Notices shall be deemed to have been given on the date of delivery to the location listed above without regard to actual receipt by the named addressee. County and Design-Build Firm may each change the above addresses at any time upon prior written notice to the other party.

The authorized representatives hereto have executed this Contract effective as of the Effective Date. Design-Build Firm's authorized representative executing this Contract represents that he or she is duly authorized to execute this Contract on behalf of Design-Build Firm.

County

St. Johns County, Florida (Seal)
(Typed Name)

By: _____
Signature of Authorized Representative

Printed Name

Title

Date of Execution

Design-Build Firm

SUPERIOR Construction Company Southeast, LLC(Seal)
(Typed Name)

By: _____
Signature of Authorized Representative

Printed Name & Title

Date of Execution

ATTEST:
St. Johns County, Florida
Clerk of Circuit Courts & Comptroller

By: _____
Deputy Clerk

Date of Execution

Legally Sufficient:

Office of County Attorney

Date of Execution



St. Johns County Board of County Commissioners

Purchasing Division

NOTICE OF INTENT TO AWARD

July 22, 2022

RE: RFQ 22-15; Design-Build Services for Summer Haven North Old A1A Road Reconstruction


St. Johns County, FL hereby issues this Notice of Intent to Award a contract, upon successful negotiations, to SUPERIOR Construction Company Southeast, LLC, as the top ranked firm under RFQ No: 22-15 based on evaluations of qualifications and subsequent technical and cost proposals. In the event negotiations are unsuccessful, the County reserves the right to cease negotiations and cancel this solicitation.

Any actual Bidder, Proposer, or Supplier who is aggrieved in connection with the Notice of Intent to Award a Contract (Protestor), where such grievance is asserted to be the result of a violation of the requirements of the St. Johns County Purchasing Policy, and associated procedures, or any applicable provision of law by the officers, agents, or employees of the County, may file a Protest to the Assistant Director of Purchasing & Contracts. The Protest shall be made in writing and filed with the Purchasing Division by 4:00PM on the fifth business day following the date of the posting of the Notice of Intent to Award, and must be accompanied by a Protest Bond in accordance with Section 13.2 of the SJC Purchasing Policy.

Should the County receive no Protest in response to this notice, in accordance with the SJC Purchasing Policy, the County will proceed with negotiations, and submittal of the negotiated Contract to the Board of County Commissioners for approval to execute.

Please forward all correspondence, requests or inquiries directly to Mr. Greg Lulkoski, Procurement Coordinator at glulkoski@sjcfl.us.

Sincerely,
St. Johns County, FL
Board of County Commissioners
Purchasing Division


County Representative Signature

Date: 7/22/2022

Jaime T Locklear, MPA, NIGP-CPP, CPPB, CPPO
Assistant Director of Purchasing & Contracts
(904) 209-0158 – Direct
jlocklear@sjcfl.us

EVALUATION SUMMARY SHEET

Date: December 2, 2021

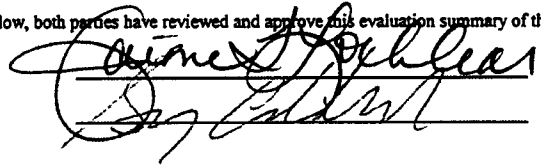
ST. JOHNS COUNTY, FLORIDA

RFQ No. 22-15; DESIGN-BUILD SERVICES FOR SUMMER HAVEN NORTH OLD AIA ROAD RECONSTRUCTION

FIRM	RATER Valerie Pacetti	RATER John Burnham	RATER Jason McKay	RATER Douglas Tarbox	RATER Dismissed	TOTAL	RANK	COMMENTS
Superior Construction Company Southeast, LLC	96.0	100.0	102.0	100.0		398.0	1	
Continental Heavy Civil Corp	75.5	94.5	91.0	97.5		358.5	2	
						0.0		
						0.0		
						0.0		
						0.0		
						0.0		

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

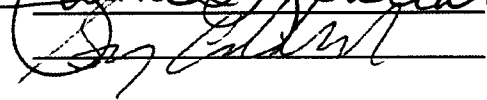
Purchasing Manager:



Date:

12-06-21

Public Works Director:



Date:

12/2/21

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 12:00 p.m. December 2, 2021 UNTIL 12:00 p.m. December 8, 2021.

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.