

**THE CITY OF DAYTONA BEACH**  
**RALPH BRENNAN WATER TREATMENT PLANT GRAVITY**  
**FILTER UPGRADE DESIGN-BUILD PROJECT**

**REQUEST FOR PROPOSALS No. 20173**

**NIGP COMMODITY CODES**

<b>90625</b>	<b>90900</b>
<b>91200</b>	<b>91300</b>
<b>91356</b>	<b>91359</b>
<b>91360</b>	<b>91842</b>
<b>92500</b>	<b>92517</b>
<b>92533</b>	<b>92535</b>
<b>92544</b>	<b>92597</b>
<b>96800</b>	



**THE CITY OF DAYTONA BEACH**  
**UTILITIES DEPARTMENT - ENGINEERING DIVISION**  
**P.O. BOX 2451**  
**DAYTONA BEACH, FLA.**

**ISSUE DATE: November 12, 2019**

**LEGAL ADVERTISEMENT  
REQUEST FOR PROPOSALS**

**The City of Daytona Beach, Florida** will receive sealed Proposals until **2:00 PM, December 19, 2019** at Daytona Beach City Hall, Office of the Purchasing Agent, 301 S Ridgewood Ave, Room 146, Daytona Beach, FL 32114 for:

**RFP 20173 - RALPH BRENNAN WATER TREATMENT PLANT GRAVITY FILTER UPGRADE  
DESIGN-BUILD PROJECT**

**A NON-MANDATORY PRE-PROPOSAL CONFERENCE** will be held at the Daytona Beach Ralph Brennan Water Treatment Plant Administration Building First Floor Training Room, 3651 LPGA Blvd, Road 6, Daytona Beach, FL 32124, on **November 21, 2019 at 2:00 PM.**

**Bidders may obtain copies** of the Request for Proposals at <http://purchasing.codb.us> by clicking the Public Solicitations link. The City of Daytona Beach reserves the right to reject any and all bids, or any portion of any bid, or to waive any informalities in the bidding.

JOANNE FLICK, CPPO, CPPB – PURCHASING AGENT  
CITY OF DAYTONA BEACH  
Issue date: November 12, 2019



**THE CITY OF DAYTONA BEACH  
OFFICE OF THE PURCHASING AGENT**

Post Office Box 2451  
Daytona Beach, Florida 32115-2451

Phone (386) 671-8080  
Fax (386) 671-8085

**REQUEST FOR PROPOSALS**

**INVITATION**

**NOTICE IS HEREBY GIVEN** that sealed proposals will be received in the office of the Purchasing Agent, Daytona Beach City Hall, Room 146, 301 South Ridgewood Avenue, Daytona Beach, Florida 32114, until **December 19, 2019 at 2:00 PM**, at which time they will be publicly opened for the following:

**Ralph Brennan Water Treatment Plant Gravity Filter Upgrade Design-Build Project**

**AWARD OF CONTRACT** subject to the Purchasing Code of the City of Daytona Beach.

**THE RFP MAY BE OBTAINED** on-line at <http://purchasing.codb.us> by clicking on the link to "Public Solicitations" or as a hard copy at the office of the Purchasing Agent City Hall, 301 South Ridgewood Avenue, Room 146, Daytona Beach, FL 32114.

**SCOPE OF WORK:** the design, permitting, and construction of the replacement of the aging Leopold filter underdrain system and associated components with a new system capable of meeting the plant's permitted capacity of 24 MGD with 1 filter cell out of service. The new system will include all components necessary to provide a fully functional filtration system, including, but not limited to new: underdrain system and associated piping, media, troughs, valves, air piping, blowers, electrical and instrumentation. Design Builder will be selected based upon their qualifications and a two phase contract negotiated, Phase 1 for design and pre GMP work, Phase 2 to incorporate the GMP.

**A NON-MANDATORY PRE-PROPOSAL CONFERENCE** will be held at the Daytona Beach Ralph Brennan Water Treatment Plant Administration Building First Floor Training Room, 3651 LPGA Blvd, Road 6, Daytona Beach, FL 32124, on **November 21, 2019 at 2:00 PM**. Interested Proposers are *urged* to attend.

**THE CITY RESERVES THE RIGHT** to reject any or all proposals or parts thereof, or to accept the proposal(s) or parts thereof, when considered by it to be in the best interest of the City. Any proposal received after the time and date specified will not be considered. No Proposer may withdraw their proposal for a period of sixty (60) days after the date of the opening of proposals. This time period is reserved for the purpose of reviewing proposals and investigating the qualifications of the Proposers.

**PROPOSALS SHALL BE ADDRESSED** to the City of Daytona Beach, Purchasing Agent, 301 South Ridgewood Avenue, Room 146, Daytona Beach, Florida, 32114, and all proposals shall have the following plainly marked on the outside of the envelope:

PROPOSAL FOR: **Ralph Brennan Water Treatment Plant Gravity Filter Upgrades Design-Build Project**  
PROPOSAL NO: **20173**

**THE CITY OF DAYTONA BEACH  
BY: Joanne Flick, CPPO  
Purchasing Agent  
ISSUED: November 12, 2019**

**THE CITY OF DAYTONA BEACH  
REQUEST FOR PROPOSALS  
No. 20173**

**GENERAL CONDITIONS**

**THIS IS NOT A BID.** This is a Request for Proposals for professional design-build services as defined in F.S. 287.055, issued in accordance with the City of Daytona Beach Code Chapter 30, Article II, Division 3, "Source Selection and Contract Formation". The Request for Proposals specifies the services needed and lists the criteria upon which the Proposal responses will be evaluated. When received, Proposals will be reviewed and ranked in order, beginning with the one deemed most advantageous to the City. Negotiations will commence with the selected Proposer(s). Upon completion of satisfactory negotiations, the Proposal negotiated as the best will be recommended to the City Commission. A copy of Chapter 30 may be obtained on-line at [www.codb.us](http://www.codb.us) or upon request.

**GENERAL CONDITIONS**

1. **INSTRUCTIONS TO PROPOSERS:** To ensure consideration of your Proposal, please follow these instructions. One original and five (5) copies of all Proposal sheets must be executed and returned, unless otherwise directed. **Provide one pdf copy of the Proposal in its entirety on cd, dvd, or other electronic media.** All Proposals not in compliance with the conditions specified herein are subject to rejection.
  
2. **PROPOSAL ENVELOPE:** All Proposals must be returned in a sealed box or envelope addressed to the City of Daytona Beach and should contain on the outside the following information:
  - a. Name and address of Proposer
  - b. Proposal Number 20173
  - c. Date and time of Proposal opening

**PLEASE NOTE:** The address of the Purchasing Division is:

Daytona Beach City Hall  
301 South Ridgewood Avenue  
Room 146  
Daytona Beach, FL 32114

3. **REQUESTS FOR INTERPRETATIONS.** If the Proposer is in doubt as to the meaning of any of the RFP Documents or other Contract Documents included in this solicitation, the Proposer may submit a written request to the City for an interpretation, care of the Purchasing Agent at the address set forth in the Invitation for delivery of the completed Proposal. Such requests must be received **10 days** prior to Proposal opening in order to be considered. The City is not obligated to respond to such requests. Any clarification or interpretation issued by the City in the form of a written addendum will be deemed a part of the Proposal Documents.

No oral clarification or interpretation will be binding.

4. **EXECUTION OF PROPOSAL:** The Proposal must contain a manual signature of an individual or of an authorized representative of the firm making the Proposal, in the space provided on the Proposal Form, if provided as a part of the Proposal package, or on Proposer's own form, if a specific Proposal form is not provided. The Proposer's name shall be inserted on all other sheets requiring the Proposal's name. In order to ensure uniformity, Proposals must be submitted on the Proposal Form, if provided, and on the attached pages.
5. **PROPOSAL OPENING - LATE PROPOSALS:** Proposals will be opened publicly, the name of the Proposers read aloud and recorded, on the date and time indicated, at the location specified in this Request for Proposals. It is the Proposers' responsibility to make certain that his/her Proposal is in the hands of the Purchasing Agent prior to the opening time at the specified location. Any Proposal received thereafter will be rejected and returned to the Proposer.
6. **WITHDRAWAL OF PROPOSALS:** Proposals may be amended or withdrawn only by written notice prior to the Proposal opening. Proposal amendments must be submitted in a sealed envelope. Amendments or withdrawals received after the Proposal opening will not be effective, and the original Proposal submitted will be considered.
7. **CONSIDERATION OF PROPOSALS:** Telephonic, electronic, or faxed Proposals will not be considered. The Proposer agrees that his/her Proposal will not be withdrawn within sixty (60) calendar days following opening of the Proposals, and that during such time his Proposal will remain firm and irrevocable. The City reserves the right to reject any or all Proposals, and to waive any technical defects in Proposals.
8. **GENERAL REVIEW PROCEDURES:** The Purchasing Code, Chapter 30, Code of the City of Daytona Beach, sets forth the general review procedures for competitive sealed proposals. Under the Purchasing Code, the City Manager is required to evaluate and rank responsive Proposals in accordance with the criteria identified in the RFP. Before submitting a recommendation for final action on this RFP to the City Commission, the City Manager is authorized to "shortlist" and negotiate with one or more of the Proposers who submitted the highest ranked Proposals. As part of these negotiations, the City Manager may request revised Proposals from shortlisted Proposers.

The City Manager has adopted a policy delegating the task of initially ranking responsive Proposals to a Selection Committee. The Selection Committee may require personal interviews with Proposers before submitting its recommendations to the City Manager.

9. **LOCAL PREFERENCE:** Pursuant to the Purchasing Code, preferences may be given in the evaluation of responsive Proposals to Local Vendors. A "Local Vendor" is a vendor which has maintained a permanent place of business with full-time employees within the city limits of the City of Daytona Beach for a minimum of six months prior to the date Proposals were received for the contract at issue, which generally provides from such permanent place of business the kinds of

services solicited, and which at the time of the solicitation fully complies with state and local laws, including City zoning and licensing ordinances.

In order to qualify as a Local Vendor, the Proposer must submit a properly completed Local Vendor affidavit as part of its Proposal. A Proposer who fails to properly complete and sign this affidavit or submit it with the Proposal will not be considered for local preference in this RFP. The City is the ultimate arbiter as to whether the Proposer qualifies as a Local Vendor; and the City may require the Proposer to submit additional documentation verifying that the Proposer qualifies as a Local Vendor.

A Proposer qualifying as a Local Vendor will be given the following Preferences:

1. At the City's discretion, the Proposer may be given bonus points of up to 10% of the total available points used to score Proposals for purposes of ranking them. The ranking process is described further in Paragraph 8, above. The exact percentage awarded may be adjusted based on the extent of work to be subcontracted to non-local vendors.
  2. After the Selection Committee has evaluated and ranked Proposals, if the highest-ranked Local Vendor's Proposal would not otherwise be among the list of the highest-ranked Proposals submitted to the City Manager (See Paragraph 8 above), the list will be modified to include the highest-ranked Local Vendor's Proposal.
10. **AWARD:** Award will be made by the City to the firm deemed most qualified, which will be determined by evaluation of Proposals using the evaluation criteria contained in the RFP, and in accordance with applicable rules and regulations governing the contract and the purchase, and adopted and established by the City and the State of Florida.

The Contract will be awarded in 2 phases. Phase 1 includes the design services and development of the Guaranteed Maximum Price, or GMP. Selection of the Design-Builder will be made based on Proposer's qualifications. There is no technical or price proposal included in the selection process.

At a certain point of the completion of design, a GMP will be negotiated for Phase 2, the construction phase of the work. Acceptance of the GMP will be by Contract Amendment.

Any contract resulting from this solicitation may, in the alternative, be awarded by the City of Daytona Beach Community Redevelopment Agency (CRA). Therefore, any bids/proposals submitted in response to this solicitation shall be deemed to be offers to the CRA as well as the City. Any final written contract may be with the CRA instead of the City, and in such instances, any required insurance, performance and payment bonds, may be required to run in favor of the CRA in addition to or in lieu of the City.

11. **NON-COLLUSION:** By submitting a Proposal in response to the request and signing the Anti-Collusion Statement form enclosed, the Proposer represents that, should the Proposal be accepted, the resulting contract(s) would not violate any

provisions of federal law or regulations, or any ordinances or regulations established by the City. The Proposer warrants as an integral and essential part of his/her Proposal: (a) that he/she has not participated in nor is he/she obligated or bound by any agreement, arrangement or other understanding with any person, firm or corporation with respect to the allocation of the business afforded by or resulting from the acceptance of his/her Proposal; (b) that his/her Proposal is or is intended to be competitive and free from any collusion with any person, firm or corporation; and (c) that he/she is not a party to nor has participated in nor is he/she obligated or otherwise bound by any agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning Proposals, prices, terms or conditions upon which the contract(s) resulting from this acceptance is to be performed.

12. **PERMITS, ETC.**: All Proposals submitted shall include in the price the cost of any business or professional licenses, permits or fees required by the City and any agency having jurisdiction over the services solicited through this Request for Proposal.
13. **PATENT INFRINGEMENT, ETC.**: By submission of a Proposal the Proposer certifies that the services to be furnished will not infringe any valid patent, copyright, or trademark and the successful Proposer shall, at his/her own expense, defend any and all actions or suits charging such infringement and hold the City harmless in case of any such infringements.
14. **PERFORMANCE**: During the performance of the contract, the Proposer agrees as follows:
  - a. The Proposer will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin.
  - b. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirement of this section.
15. **FLORIDA PUBLIC RECORDS LAW**: Sealed Proposals received by the City pursuant to the Request for Proposals will be temporarily exempt from disclosure in accordance with Florida's Public Records Laws. Thereafter, all Proposals will be open for a personal inspection by any person pursuant to Public Records Law.

If the Proposer believes that the Proposal or any portion thereof is permanently exempt from disclosure under the public records laws, the Proposer must state the grounds for this position in CAPITAL LETTERS on a cover sheet accompanying the sealed Proposal. The Proposer will be contacted prior to the opening of the Proposal and a determination will be made as to whether or not it is exempt prior to opening. If a determination is made that it is not exempt from disclosure, the Proposer may request the return of the sealed Proposal in writing.

16. **EVALUATION CRITERIA AND SUBMITTAL REQUIREMENTS**: The following weighted evaluation criteria will be used to evaluate Proposals and develop a recommendation for award for subsequent City Manager approval. Each criterion will be scored between 1 and 5; 1=poor, 2=below average, 3=average, 4=above

average, 5=excellent. Scores will be multiplied by the criterion weight for a weighted score; weighted scores will be totaled for the weighted total score.

**A. Letter of Interest Unweighted**

The Proposal must include a cover letter (maximum of three pages) containing the name, address, telephone number, fax number, and e-mail address of the Proposer and the principal contact person. For the purpose of this Proposal: the term "Proposer" means the firm or entity submitting the proposal; the term "Team" is meant to signify the various entities comprising the Design-Build Team as a whole.

The Letter of Interest shall list the Proposer's Team members, noting the type of firm or organization (corporation, partnership, joint venture, etc.) that will serve as the prime contracting party. Note, if prime contracting party is a joint venture, Proposer shall provide a copy of the fully executed joint venture agreement. The letter of interest shall include the following: name, address, telephone number, fax number, and e-mail address for all listed consultants, subconsultants and/or subcontractors for the Project.

The letter shall include an executive summary that must include a concise overview of the key elements of the Proposal and must summarize and refer to information in the Proposal concerning satisfaction of the Experience, Personnel, and Past Performance requirements. The executive summary shall not be used to convey additional information not found elsewhere in the Proposal.

**B. Team History Weight=10**

On a maximum of three pages, describe the Team's experience working together and/or describe the steps the Team has taken to promote integration and a collaborative working environment. In addition to the narrative, provide two project examples with references in which the Designer and Builder worked together previously. Projects must have been completed within 10 years of the due date of this RFP and may be any delivery method (i.e., Design-Build, CMAR, Design-Bid-Build, etc.). Each project reference is limited to one page. For each reference project, provide the following information at a minimum:

1. Name of Owner
2. Owner reference and contact information
3. Contract Value
4. Dates work was performed
5. Description of how Designer and Builders working relationship will translate to this project.
6. Note any challenges encountered, and how they were overcome

**C. Key Personnel Qualifications Weight=30**

Provide the following information with regards to key personnel.

**1. Organizational Chart**

On one 11x17 page, provide an organization chart (showing Team Members, Key Personnel and their firm affiliation) for all phases of the Project, from design through construction final acceptance. Warranty, and maintenance periods. Be certain to identify specific individuals for key functions and show interrelationships and reporting hierarchy. Note whether individuals are performing multiple functions. At a minimum, identify the Key Personnel performing the functions identified below. To the extent that the Proposer has additional personnel on their team, the Proposer should include those individuals.

- a. Person responsible for the overall management of the Project and design-build contract (i.e., Project Director);
- b. Designer of Record;
- c. Water Treatment Process Expert;
- d. Person responsible for overall construction management (i.e., Construction Project Manager);
- e. Person responsible for on-site field supervision and direction and construction (Superintendent);
- f. Person responsible for safety (Safety Officer);
- g. Person responsible for quality assurance;
- h. Person responsible for cost controls and budgeting;
- i. Person responsible for scheduling.

**2. Resumes**

Provide a resume for all Key Personnel as identified above in Section C.1, above. Proposer may include up to four additional resumes for personnel not specifically identified above. Individual resumes may be no longer than two pages for Key Personnel and one page for additional personnel, and should include the following information:

- a. Description of the individual's proposed Project role;
- b. Identification of employer and number of years employed by the firm;
- c. Educational background, professional licenses, and/or certifications;
- d. Experience relevant to their proposed role on the Project, the individual's title and role on each listed project, and how their past performance on previous projects will benefit this Project.

**D Designer Past Performance Weight=20**

Provide a one page narrative of the Designer's past performance. The narrative should describe the Designer's past performance in successfully completing projects of Similar Scope and Complexity submitted in response to the projects requested below. For the purposes of this Proposal, a project of Similar Scope and Complexity is defined as a project that includes:

- design or construction of new treatment process improvements, or modifications to existing treatment processes,
- minimum value of \$4M
- performed at an active Water Treatment Plant
- maintaining plant operations.

Please note that for the purposes of the similar project description of a submitted project, the improvements/modifications need to be to a water treatment process within the plant, and not to an ancillary process. Examples of treatment processes include, but are not limited to filtration, disinfection, chemical treatment, and clarification. Examples of ancillary processes include, but are not limited to, processing of treatment byproducts (such as lime sludge), raw or finished water storage, electrical/instrumentation upgrades solely (i.e. without process related upgrades).

The Designer shall provide five project examples with references that were completed within 10 years of the due date of this RFP. Each project reference will be limited to one page. For each reference project, provide the following information at a minimum:

1. Name of Owner
2. Owner reference and contact information
3. Contract Value
4. Dates work was performed
5. Description of project showing relevance to the similar project description
6. Note any challenges which occurred, and how they were overcome
7. Key Personnel that participated in project that are included in this Proposal, along with a clear description of the project role and responsibility of each.

Each project is eligible for award of up to 1 point, as outlined below.

1. A project meeting the description of Similar Scope and Complexity, as defined above, will be eligible to receive ½ point.
2. Same project executed as Design-Build (or other collaborative delivery method) will be eligible to receive ½ point

## **E. Builder Past Performance Weight=25**

Provide a one page narrative of the Designer's past performance. The narrative should describe the Designer's past performance in successfully completing Projects of Similar Scope and Complexity as described above in Section 16.D, above.

The Builder shall provide five project examples with references that were completed within 10 years of the due date of this RFP. Each project reference will be limited to one page. For each reference project, provide at least the following information:

1. Name of Owner
2. Owner reference and contact information
3. Contract Value
4. Dates work was performed
5. Description of project showing relevance to the Similar Project Description
6. Note any challenges which occurred, and how they were overcome
7. Key Personnel that participated in project that are included in this Proposal, along with a clear description of the project role and responsibility of each.

Each project can earn a total of 1 point, as outlined below.

1. A project meeting the description of Similar Scope and Complexity, as defined above will be eligible to receive ½point.
2. Same project executed as Design-Build (or other alternate delivery method) will be eligible to receive ½ point.

## **F. Project Approach Weight=15**

Include a narrative of the Proposers approach to the project. The narrative shall be a maximum of five pages and address the following:

1. Narrative of Project and Understanding of the Project Issues: Provide a narrative demonstrating the Proposer's understanding of the project goals, requirements, objectives, the project delivery method, and how the Proposer intends to ensure that the scope, budget and schedule will be met. Identify the greatest risk(s) in the project and methods to minimize this risk.

The narrative should discuss conceptually how the Proposer will sequence construction activities to maximize efficiency and minimize impacts to the WTP. As noted in the Scope of Work, **the project is being conducted at the City's only WTP.** The project understanding should emphasize the Proposers understanding of this constraint and discuss how the Proposers will create an aggressive schedule while also recognizing that daily operation of the WTP will supersede construction activities.

2. **Cost Effectiveness of Proposed Solutions:** Provide a description of the Proposer's approach to cost estimating during the various phases of the design (i.e. conceptual, schematic, final and construction documents). Indicate the methodology and estimating system used in preparation of estimates. Address how the Proposer will prepare, submit, reconcile and obtain approval of the Guaranteed Maximum Price.
  3. Explain how Proposer intends to meet budgetary goals and timetables to include the following:
    - a. Implementation of conflict resolution methods.
    - b. Description of schedule controls.
    - c. Provide examples of how the Proposer will ensure that the project stays within budget during each phase of construction and what assurances are given that the estimate may be accurate or reliable.
  4. **Project Management Reporting:** Provide an explanation of how the Proposer will manage and report each aspect of the Project to realize budgetary goals, timetables and quality control objectives. Describe project communication tools to ensure streamlined information between the Team and the City.
  5. Discuss how the Proposer intends to use innovative approaches and/or best practices to achieve results considering reporting, safety, quality, cost and time as they relate to any and all aspects of design, equipment, materials, pre-construction services, and construction.
18. **REFERENCES:** The contact person(s) listed as a reference shall be someone who has personal knowledge of the contractor's performance during the referenced project. Contact persons must have been informed that they are being used as a reference and that the City may be calling them. More than one person can be listed but all must have knowledge of the project. **DO NOT** list principals or officers who will not be able to answer specific questions regarding the project.
  19. **REJECTION OF PROPOSALS:** The City reserves the right to reject any or all Proposals in whole or in part and to award by items, parts of items, or by any aggregate group of items specified. The City also reserves the right to waive technical defect when in its judgment the best interests of the City thereby will be served.
  20. **QUALIFYING PROPOSERS:** Prior to awarding of Proposal, the City may require submission by Proposer of complete financial statement and questionnaire describing Proposer's financial ability and experience in performance of similar work.
  21. **RULES AND REGULATIONS:** All work performed under this agreement shall be in strict compliance with local, State and Federal laws, rules and regulations. Proposer shall assume all liability for fines and penalties assessed by the authorities for any infractions.

22. **NO COSTS:** The City of Daytona Beach bears no responsibility for any costs incurred in the preparation of the Proposal.
23. **DRUG FREE WORKPLACE:** The selected firm must provide the Drug Free Workplace Form in accordance with Florida Statute 287.087, prior to Contract award.
24. **PROHIBITION OF LOBBYING.** Except for negotiations authorized by the City Purchasing Code, the Consultants Competitive Negotiations Act, or other state or federal law, lobbying by the Proposer, or the Proposer's principals, officers, employees, attorneys, or other agents, is strictly prohibited during the Blackout Period. Lobbying in violation of this section may cause the proposal to be rejected.

"Lobbying" means influencing or attempting to influence action or non-action in connection with this RFP or the proposal, through direct or indirect oral or written communication with the Mayor, any member of the City Commission, the City Manager, or any other City employee. The following activities are not within the definition of "lobbying," and are permitted: requests for clarification submitted to the Purchasing Agent in accordance with this RFP, discussions with the Selection Committee as part of the selection process, the submission of additional information in response to a request by the City, and addressing the City Commission during the City Commission meeting at which the contract is awarded or all proposals are rejected.

The Blackout Period begins on the date that this RFP is issued and ends when the contract is awarded or all proposals are rejected.

25. **SELECTION PROCESS:**

For the purpose of selecting the most qualified firm, the City will use a competitive selection process as set forth in pertinent City and State procurement requirements. The procedure will involve the following steps:

- a. The City will advertise and mail formal Requests For Proposals to interested Proposers.
- b. The City's Selection Committee will review, rank, and shortlist all Proposals received by the established deadline for submission. Oral presentations by the short-listed Proposers to clarify their Proposals may be required. These presentations will serve to further explain their written Proposal. Subsequent to the receipt of Proposals, the City may schedule a time for each requested oral presentation at a place convenient to the City.
- c. The City's Selection Committee will then rank each Proposal and prepare a recommendation for approval by the City Manager. Upon receipt of the City Manager's authorization, the City's Project Manager shall negotiate a contract with the selected firm. Should the Project Manager be unable to negotiate a satisfactory contract with the firm considered to be most qualified, the City Manager, or designee, shall terminate such negotiations with that firm and begin negotiations with the next most qualified firm and so on until negotiations are successful.

- d. **The City Commission has the sole authority to bind the City to the terms and conditions of a contract that has been approved in a public meeting of the City Commission. The City Commission reserves the right to modify or reject any contract for the acquisition of goods and/or services submitted to it for consideration.**

## ANTI-COLLUSION STATEMENT

By signing this form, the Proposer agrees that this Proposal is made without any other understanding, agreement, or connection with any person, corporation, or firm submitting a Proposal for the same purpose and that the Proposal is in all respects fair and without collusion or fraud.

Sign in ink in the space provided below. Unsigned Proposals will be considered incomplete, and will be disqualified and rejected.

IT IS AGREED BY THE UNDERSIGNED PROPSEER THAT THE SIGNING AND DELIVERY OF THE PROPSAL REPRESENTS THE PROPOSER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FORGOING TERMS AND CONDITIONS AND SCOPE OF SERVICES, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN THE PARTIES.

NAME OF FIRM: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_  
(MUST BE SIGNED BY A COMPANY OFFICER OR AUTHORIZED AGENT)

NAME TYPED: \_\_\_\_\_ TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY AND STATE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**DRUG FREE WORKPLACE FORM**

The undersigned, in accordance with the Florida Statute 287.087 hereby certifies that \_\_\_\_\_ does:

(Proposer)

1. Publish a statement notifying that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violation of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, any Available drug counseling, rehabilitation, employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under solicitation a copy of the statement specified in Paragraph 1.
4. In the statement specified in Paragraph 1, notify the employees that, as a condition of working on the commodities or contractual services that the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to any violation of Chapter 1893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is convicted.
6. Make a good faith effort to continue to maintain a drug free workplace through implementation of Paragraph 1, through Paragraph 5.

As the person authorized to sign this statement, I certify that this firm fully complies with the above requirements.

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

\_\_\_\_\_  
Signature & Title

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY  
PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted to \_\_\_\_\_  
*(print name of the public entity)*  
by \_\_\_\_\_  
*(print individual's name and title)*  
for \_\_\_\_\_  
*(print name of entity submitting sworn statement)*  
whose business address is

\_\_\_\_\_  
\_\_\_\_\_

and (if applicable) its Federal Employer Identification Number (FEIN) is  
\_\_\_\_\_

(If the entity has no FEIN, insert the Social Security Number of the individual signing this sworn statement above:

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined In Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes means:
- (a) A predecessor or successor of a person convicted of a public entity crime, or

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES, cont.**

- (b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, will be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months will be considered an affiliate.
5. I understand that a “person” as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (*Indicate which statement applies.*)

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES, cont.**

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list (*attach a copy of the final order.*)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

\_\_\_\_\_  
[Signature]

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Personally known \_\_\_\_\_

OR Produced Identification \_\_\_\_\_  
(Type of identification)

Notary Public - State of \_\_\_\_\_

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

My commission expires \_\_\_\_\_

\_\_\_\_\_  
(Printed typed or stamped  
commissioned name of  
Notary Public)

**LOCAL VENDOR AFFIDAVIT**

*Complete and submit this form ONLY if you qualify for local preference as provided in the City of Daytona Beach Purchasing Code.*

*A copy of the Proposer's Daytona Beach Business Tax Receipt must be submitted with this Affidavit.*

NAME OF PROPOSER: \_\_\_\_\_

LOCAL BUSINESS ADDRESS *(street address being used to claim Local Preference, including zip code):*

The undersigned certifies under penalty of perjury each of the following:

The Local Business Address has continuously been used as a Permanent Place of Business with at least one full-time employee since \_\_\_\_\_.

*(Insert date)*

The Local Business Address has consistently offered or provided the goods or services being solicited by the City of Daytona Beach during the time referenced above.

The Local Business Address has not been established with the sole purpose of obtaining the advantages that may be granted pursuant to the Local Preference provisions of the City of Daytona Beach Purchasing Code.

\_\_\_\_\_  
Signature *(Must be same person as person signing the Proposal)*

\_\_\_\_\_  
Print Name/Title

Subscribed and sworn to before me

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Signature of Notary Public)

My commission expires: \_\_\_\_\_

**The City of Daytona Beach reserves authority to require a copy of the corporate charter, corporate income tax filing return, and any other documents(s) to evaluate the Proposer's Local Preference claim.**

## Scope of Work

### Background

The City of Daytona Beach owns and operates the Ralph Brennan Water Treatment Plant (Brennan WTP). The Brennan WTP operates as a lime softening plant and was originally constructed in the 1970's, with an expansion in the 1980's to its current permitted treatment capacity of 24.0 MGD. The Brennan WTP is considered a Class I A Community public water system (PWS) and is the sole source of water for the City of Daytona Beach. Based on 2017 flows, the ADD was 12.27 MGD and the MDD was 15.15 MGD.

The primary treatment process includes ozonation, lime softening, recarbonation, chlorination, filtration, and fluoridation. Additional ancillary processes include sludge thickening/dewatering, washwater recovery, and storage/high service pumping. A process flow diagram is provided on **Figure 1**.

### Project Need

After recarbonation, water is conveyed to the dual media filtration system for removal of suspended solids using a gravel, sand and anthracite combination filter media. The filtration system consists of six (6) individual filter cells. The filter structure itself was built in 1974 when the Brennan WTP was first constructed. Filters 1, 2 and 3 were placed into service when the plant was built in 1974, with Filters 4, 5 & 6 being placed into service in 1985 when the plant was expanded. The following lists some aspects of the design parameters for the existing filtration system:

- Underdrain Mfg: Leopold
- Rated Capacity: 5 MGD per cell, for a total filtration capacity of 30 MGD.
- Filter Design Rate: 3 gpm per sq. ft
- Backwash Rate: 6-12 gpm per sq. ft
- Backwash Volume: 160,000 gpd per cell (MDD)
- Backwash Initiation: 6-8 psi head loss (typically 160 hrs)

Each filter cell utilizes a turbidity meter to monitor the filters performance. While the total installed filtration capacity is 30 MGD, the Brennan WTP is unable to filter greater than 15 MGD without exceeding the regulatory limit for Total Suspended Solids (TSS) of 1.0 NTU at the Point of Entry (POE) for 4 hours. Within the past year, the Brennan WTP has had two occurrences of reportable turbidity exceedances underscoring the need for this project. The following factors are thought to contribute to the overall filter performance issues:

- Age – The filter components (i.e. underdrains, troughs, piping, valves and electrical) are original to the filters being placed into service. As such, the filter components for Filters 1, 2 and 3 are 45 years old and the components associated with Filters 4, 5 and 6 are 34 years old. The components are past their useful life and beginning to show signs of excessive wear.

- **Materials of Construction** – The filter underdrains are made of clay and plastic and have shown signs of excessive wear. Filters 2, 3, 4 and 6 all consist of clay underdrains installed in 1974 (Filters 2 and 3) and 1985 (Filters 4 and 6). Filters 1 and 5 were replaced with a plastic underdrain system in 2005. The excessive wear has been evidenced by the excessive loss of filter media. Additionally, inspections of the clear well have shown significant build-up of filter media.
- **Obsolete Components** – The filters are set up to run in an automated mode by opening/closing valves associated with the filter cells. The actuators and control system were installed in 2004 and many of the components are no longer available/serviceable. Additionally, many valves no longer fully seat and allow for leakage around the valve.
- **Mechanical Malfunctions** – Given the age/condition of the various filter components, mechanical malfunctions (i.e. valve failing to open/close, glitch in SCADA system, etc.) have led to regulatory exceedances for TSS.

In addition to the abovementioned items, the Project will address other filter related items. These items include:

- **Pipe Gallery** – Filtered Water and Backwash piping, including all associated valves are located in a pipe gallery below and between the filter cells. Due to the environment, the gallery is constantly damp and has led to paint peeling off the walls, degradation of metal conduits, corrosion of bolts on filter piping, among other items.
- **Concrete Restoration** - Concrete spalling is visible within the 45 year old structure within most filter cells. Additionally, Filters 4, 5 and 6 have a fiberglass liner that will need to be removed.

### **Scope of Services**

The purpose of this project is to design and construct, under one contract, the replacement for the aging filter system with a new system. The City wishes to replace the underdrain system with a stainless steel underdrain system that includes air scouring. The City's preferred manufacturer of the filter system is AWI, but equal systems will be considered if identified. The new system will include all components necessary to provide a fully functional filtration system, including, but not limited to new: underdrain system and associated piping and valves, filter media, troughs, air piping, blowers, electrical and instrumentation. The scope of services is anticipated to include, but not be limited to, the following:

- **Design services that will include:**
  - Recommendation of complete filter system.
  - Evaluation of the existing system to determine the extent of components that need to be replaced.
  - Assessment of concrete structure and recommendations for repair, as necessary.
  - Evaluation and recommendation of GAC as a possible filter media layer.

- Electrical and instrumentation design needed to bring system up to code and for compatibility with future SCADA improvements.
- Comprehensive design services of selected improvements
- Regulatory permitting
- Preconstruction Services with Development of Guaranteed Maximum Price for construction
- Construction of selected improvements, including any demolition and rehabilitation of the filters
- Logistic sequencing for improvements while the Brennan WTP is operational
- Start-up and testing
- Operation and Maintenance manuals
- Training in the operation of selected improvements
- Scheduling of all logistics

Estimated Construction Budget: \$ 4.35M

DRAFT



**Existing Filter Cells 1, 2 and 3**



**Close-up of Filter 3**



**View of Filter Gallery**



**Close-up of Filter Piping and Valves**

**CONTRACT NO.  
 BETWEEN CITY OF DAYTONA BEACH  
 AND  
 FOR DESIGN/BUILD SERVICES  
 FOR THE  
BRENNAN WATER TREATMENT PLANT FILTER REPLACEMENT**

This DESIGN-BUILD CONTRACT ("Contract") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, between Daytona Beach , (hereinafter "CITY "), and COMPANY (hereinafter "DESIGN-BUILDER").

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## **RECITALS**

**WHEREAS**, the CITY has determined that it is necessary to retain a Designer-Builder to provide profession engineering design and construction services;

**WHEREAS**, the Design-Builder has reviewed RFP No. 20173 and Addenda required pursuant to this Agreement and is qualified, willing and able to provide and perform all such services in accordance with its terms.

**WHEREAS**, the CITY, through a selection process conducted in accordance with the requirements of law and CITY policy, has determined that it would be in the best interest of the CITY to award a contract to DESIGN-BUILDER for the rendering of those services described in the Scope of Services.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and provisions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY and DESIGN-BUILDER agree as follows:

### **ARTICLE 1** **INCORPORATION OF RECITALS**

1.1 RECITALS. The foregoing Recitals are true and correct and the recitals and instruments referred to therein are hereby incorporated herein by reference.

1.2 RFP No. 20173 consisting of pages 1 through 88, and including Addenda and the Proposal submitted by the DESIGN-BUILDER on December 19, 2019, all filed with the Clerk the CITY, as RFP No. 20173 are hereby specifically made a part of this Contract as if the same had been set forth at length herein.

Unless addressed in paragraph 3.1 below, in the event of any conflict between the documents constituting this Contract, the documents shall be given precedence in the following order:

- 1) Permit from Agencies as required by law
- 2) Change Orders
- 3) This Contract;
- 4) Any Exhibits attached hereto;
- 5) Construction Plans
- 6) RFP No. 20173 and any addenda thereto; and
- 7) The Proposal submitted by DESIGN-BUILDER on December 19, 2019

### **ARTICLE 2** **DEFINITIONS**

2.1 The following words and expressions shall, wherever they appear in the Contract, be construed as follows:

2.1.1 Contract. Contract means this document executed by the DESIGN-BUILDER and CITY and any and all documents referenced herein and any Attachments or Exhibits attached hereto as well as all subsequent Change Orders or Amendments.

2.1.2 Application for Payment. Application for Payment means the form which is to be used by DESIGN-BUILDER in requesting a progress or final payment and which shall include such supporting documentation as is required by this Contract.

2.1.3 Approval. When applied to approval from the CITY, this term shall mean approval which is, at a minimum, evidenced by a written document authored or initialed by the CITY and subject to the formalities imposed by specific provisions in this Contract.

2.1.4 Change Order. Change Order shall mean a written order authorizing an addition, deletion, or revision in the Work or an adjustment in the Guaranteed Maximum Price (defined in 2.1.17) or the Contract Time issued after execution of the Contract.

2.1.5 Contract Time. Contract Time means the number of calendar days stated in the Contract for completion of the Work as amended by approved Change Order(s). The commencement date of the Contract Time shall be the Notice to Proceed Date shown in the Notice to Proceed with Phase I.

2.1.6 CITY. CITY shall mean Daytona Beach, a municipal corporation of the State of Florida and its authorized designees, agents and employees.

2.1.7 Day. One (1) calendar day when used in the Contract, measured from midnight to the next midnight.

2.1.8 Defective. Defective is an adjective which refers to Work that is faulty, deficient or otherwise does not conform to the Final Construction Documents or the requirements of this Contract.

2.1.9 Design-Build Documents. Design-Build Documents means all documents, from preliminary to as-builts, including, but not limited to design documents, design drawings, plans, construction drawings, specifications, data, studies, surveys, calculations, permit applications, estimates, photographs, reports, memoranda, letters, sketches, renderings, approved submittals, and other documents prepared by DESIGN-BUILDER and/or its Professionals, Subconsultants, and/or Subcontractors, that fix, depict and/or describe the size, quality and character of the entire Project or any portion of the Project.

2.1.10 Design-Build Fee. Design-Build Fee is included within the Guaranteed Maximum Price (defined in 2.1.17) and shall mean all fees, costs and expenses to be paid to members of the DESIGN-BUILDER'S team (e.g. architects, engineers, Subcontractors, Subconsultants, Professionals etc.) to manage, design and construct the Project, excluding materials and labor for actual construction. Design-Build Fee shall include all personnel costs, overhead, profits and administrative costs, insurance, performance and payment bonds, general conditions, travel, printing costs, and other costs, but exclude costs under General Requirements.

2.1.11 Design Professional. Professional means any individual, firm or entity, which provides design or professional services, whether architectural, engineering or surveying, and which is engaged by DESIGN-BUILDER in providing and performing the Work for which DESIGN-BUILDER is contractually obligated, responsible and liable to provide and perform under this Contract. Each Professional shall possess all applicable, valid and current licenses necessary to do business in the State of Florida and the CITY for the performance of the Work. The CITY expressly disclaims any responsibility, liability

or obligations whatsoever for or under any Contract entered into between DESIGN-BUILDER and the Professional and further states that it shall not be responsible for any payments or any other obligations due or owing to the Professional.

2.1.12 Engineer of Record. Engineer of Record means engineer firm name. Engineer of Record is also included in the definition of "Professional" below.

2.1.13 Equal/Equivalent. Equal or Equivalent means a product, service, component or system which is demonstrated, to the satisfaction of the CITY, to be equal or equivalent to the product, service, component or system specified. The CITY shall be the sole judge of acceptability of an Equal or Equivalent.

2.1.14 Final Completion. Final Completion means the date the Work, including but not limited to all Punch List items (as defined herein below), has been completed to the CITY'S satisfaction.

2.1.15 Final Construction Documents. Final Construction Documents means the approved and permitted Design-Build Documents, which are developed, prepared and created by the DESIGN-BUILDER and reviewed and approved in writing by the CITY, setting forth in detail all Work, including, but not limited to, all labor, materials, equipment, and services necessary to construct the Project. Final Construction Documents shall be prepared by DESIGN-BUILDER in accordance with the following:

- (i) The Project Schedule;
- (ii) The Guaranteed Maximum Price (GMP);
- (iii) The DESIGN-BUILDER'S Proposal submitted in response to the RFP;
- (iv) All documents and requirements of this Contract; and
- (v) Any and all other document(s) agreed to by CITY and DESIGN-BUILDER.

Once the Final Construction Documents for the Project have been approved in writing by the CITY, no changes shall be made thereto without the express written consent of the CITY.

2.1.16 General Requirements. Cost of General Requirements is included within the Guaranteed Maximum Price (defined in 2.1.17) and shall include general DESIGN-BUILDER Project expenses during construction not included within general conditions. General Requirements include mobilization, field offices, superintendent(s), construction testing, lay-out and as-built surveying, temporary utilities, temporary security fences, temporary safety-related protection, dust control, pest control, temporary hoists, scaffolding, project sign etc.

2.1.17 Guaranteed Maximum Price (GMP). Guaranteed Maximum Price means the maximum compensation to be paid hereunder by the CITY to DESIGN-BUILDER for all salaries and fees including but not limited to the Design-Build Fee, costs, expenses, taxes, reimbursable costs and expenses, overhead and administrative costs, general conditions, profits and costs of all labor, services, equipment, tools, supplies, fixtures and materials incurred or used by DESIGN-BUILDER in providing and performing all the Work required to complete the Project.

2.1.18 Nonconformance Report. A written notice from the Project Manager to the DESIGN-BUILDER reporting on an aspect of Defective Work which requires the immediate correction of same by the DESIGN-BUILDER.

2.1.19 Notice to Proceed With Phase I – Design Service. Notice to Proceed with Design Services means CITY'S written authorization to DESIGN-BUILDER to commence professional, design, and consulting services for the Work under this Contract.

2.1.20 Notice To Proceed With Phase II – Construction Service. Notice to Proceed with Construction Services means CITY'S written authorization to DESIGN-BUILDER to commence with construction of the Project, including mobilization.

2.1.21 Project. Project means the design and construction of the Brennan Water Treatment Plant Filter Replacement and shall mean and include, but not be limited to, each and every thing included in the Final Construction Documents, together with all design, permitting, regulatory compliance and other "soft costs" associated with the Project.

2.1.22 Project Manager. An individual employed by the CITY and assigned under the supervision of the City Manager to manage and administer the Project which is the subject of this Contract. The Project Manager will provide direct contact and communication between the CITY and DESIGN-BUILDER with respect to providing information, assistance, guidance, coordination, and review of the DESIGN-BUILDER'S Work pursuant to this Contract and any authorized Change Order(s). The Project Manager shall not be authorized to, and shall not, issue any verbal or written request or instruction or approval to DESIGN-BUILDER that might have the effect, or that might be interpreted to have the effect, of modifying or changing this Contract in any respect.

2.1.23 Project Schedule. The Project Schedule means the schedule, showing the sequence and schedule of the DESIGN-BUILDER'S furnishing of all labor, services, equipment and materials for the Project. The Project Schedule consists of Project Schedule Summaries which establish major milestones for the project, and the Project Schedule Detail (to be prepared by DESIGN-BUILDER and accepted by the CITY) showing in detail the sequence and schedule of the DESIGN-BUILDER'S Work for the Project. The Project Schedule Summaries will be prepared, accepted and approved by the parties after the completion of the Design Phase of the Project and will be attached and incorporated herein as an Exhibit to this Contract at a later date. The Project Schedule Detail shall be submitted by DESIGN-BUILDER for review and approval of CITY prior to the Notice to Proceed with Construction Services. The Project Schedule may be amended, modified or revised only in accordance with the terms of this Contract.

2.1.24 Punch List. Punch List means the approved list(s) of incomplete and/or deficient Work that shall be completed by DESIGN-BUILDER after Substantial Completion or Beneficial Occupancy but before Final Completion can be achieved.

2.1.25 Site. Site shall mean the area on which the DESIGN-BUILDER'S construction Work is to be performed and such other areas that may be designated as such by the Final Construction Documents, and upon which the Project and associated improvements are to be constructed by DESIGN-BUILDER.

2.1.26 Subconsultant. Subconsultant means any person, firm or entity offering or providing professional and/or consulting services which is not included in the definition of "Professional" above and which has a direct contract with DESIGN-BUILDER or with any other Subconsultant for the performance of any part of the DESIGN-BUILDER'S obligations in providing and performing the Work for which DESIGN-BUILDER is contractually obligated, responsible and liable under the Contract. Each Subconsultant shall possess all applicable valid and current trade licenses and all licenses necessary for the performance of the Work.

2.1.27 Subcontractor. Subcontractor means any person, firm or entity providing other than professional or consulting services which has a direct contract with DESIGN-BUILDER or with any other subcontractor for the performance of any part of the DESIGN-BUILDER'S obligations in providing and performing the Work for which DESIGN-BUILDER is contractually obligated, responsible and liable under the Contract. Each subcontractor shall possess all applicable valid and current trade licenses and all licenses necessary for the performance of the Work.

2.1.28 Submittals. Submittals mean all drawings, diagrams, illustrations, schedules, samples, test results, and other data which are specifically prepared by DESIGN-BUILDER, its Professionals, Subconsultants, or Subcontractors, or any manufacturers, fabricators, suppliers or distributors, and submitted by DESIGN-BUILDER to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by DESIGN-BUILDER, and/or its Professionals, Subconsultants, or Subcontractors, or any manufacturers, fabricators, suppliers or distributors, and submitted by DESIGN-BUILDER to illustrate material or equipment for some portion of the Work, at no additional cost to the CITY.

2.1.29 Substantial Completion. Substantial Completion means the date the Work is complete, with the exception of Punch List items, and the Project is available for its intended use by CITY as evidenced by a fully executed Certificate of Substantial Completion which has been prepared and certified by the Engineer of Record after approved by, and at the discretion of, the Project Manager for full compliance with the pertinent requirements of this Contract.

2.1.30 Substitution. Substitution means a product, service, component or system which is not Equal or Equivalent to that specified, but is proposed by DESIGN-BUILDER in lieu of that specified. The acceptability of a substitute shall be based on the data submitted and the benefit to the CITY. The CITY shall be the sole judge of acceptability.

2.1.31 Work. Work means any and all authorized and approved work, materials supplies, tools, fixtures, labor, services, equipment, design, professional, construction management and contract administration services for the design, Site development and construction of the Project performed and provided by DESIGN-BUILDER (and its agents, employees, Subconsultants, Professionals, and Subcontractors) pursuant to this Contract.

**ARTICLE 3**  
**PRELIMINARY MATTERS/NOTICES TO PROCEED/**  
**ASSUMPTION OF RISKS BY DESIGN-BUILDER**

3.1 ENTIRE CONTRACT/PRECEDENCE. The Contract consists of this document executed by the parties and any and all documents referenced herein and Attachments and Exhibits attached hereto as well as all Change Orders and Amendments. It is the intent of the Contract to describe the total Work. The documents of the Contract are complementary; what is called for by one is as binding as if called for by all. If the DESIGN-BUILDER finds a conflict, error or discrepancy within this Contract regarding the Work or other documents of the RFP, or between any of them, the DESIGN-BUILDER shall promptly notify the Project Manager in writing upon discovery of such conflict, error or discrepancy. In resolving such conflicts, errors, and discrepancies, the documents shall be given precedence in terms of the most stringent requirements as determined by CITY. Enforcement of the most stringent requirements shall be at the CITY'S option. Any Work that may reasonably be inferred from the Contract as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials, or equipment described in words which, so applied, have a well-known technical or trade meaning shall be deemed to have such recognized meaning.

3.2 SCOPE OF WORK - The Work on the Project shall be conducted in two Phases. Phase I shall be the Design Services Phase. Phase II shall be the Construction Phase. The Scope of Work and Fee Schedule for Phases II shall be negotiated by the parties and attached to and made a part of this Contract at a later date.

3.2.1 DESIGN-BUILDER shall provide and perform all Work necessary for the completion of the entire Project commensurate with the intended high quality of design and construction and low maintenance cost for the Project. The Scope of Work shall include, but is not limited to, providing and performing all Work necessary:

- (i) for the design and construction of the Project
- (ii) to furnish efficient design and construction administration, supervision and superintendence; and
- (iii) for Site development tasks, permitting, regulatory matters, approvals, testing, surveying, environmental mitigation, geotechnical, traffic, architectural, engineering, landscaping, security, interior design, acoustical, lighting, construction, post-construction, accounting and control, coordination and efficient management to facilitate completion of the Project.

3.2.2 Quality of Scope of Work. The Project, as designed and constructed, shall be functionally sound, technically proficient, developed with structural integrity, shall exhibit high quality engineering principles, shall be in compliance with all governing laws, regulations, building codes, and requirements in effect as of the date of the issuance of the building permit.

3.3 PHASE I – Design Services. The Phase I – Design Services Scope of Work and Fee Schedule for the Project is attached hereto as **Exhibit A**. This Phase of the

Contract shall consist of the design and permitting of the Project. CITY agrees to pay to DESIGN-BUILDER an amount not to exceed >\$ Dollars (\$>XX.00) for the above Phase I services.

### 3.4 COMMENCEMENT OF WORK AND NOTICES TO PROCEED

3.4.1 The Contract Time shall commence on the Notice to Proceed date indicated in the Notice to Proceed with Design Services. Notice to Proceed with Design Services shall be issued by the Project Manager within thirty (30) days after the City Commission has approved the contract and the DESIGN-BUILDER has delivered to the CITY Insurance Certificates in accordance with the Contract.

3.4.2 The DESIGN-BUILDER shall begin the Work on the date the Contract Time commences. No Work shall be performed by the DESIGN-BUILDER or its Professionals, Subconsultants, or Subcontractors, and no irrevocable commitments to vendors shall be made, until issuance of Notice to Proceed with Design Services, at which time DESIGN-BUILDER may commence to perform design services in accordance with the requirements of this Contract.

3.4.3 A separate Notice to Proceed with Construction Services shall be issued by the Project Manager upon receipt of the required Payment Bond and Performance Bond. In the absence of written authorization from the Project Manager, no construction Work shall be performed by the DESIGN-BUILDER and no irrevocable commitments to vendors shall be made until a separate Notice to Proceed with Construction Services is issued by the Project Manager.

3.4.4 PRE-DESIGN CONFERENCE(S). Before the Notice to Proceed with Design Services is issued, conference(s) shall be held for review and acceptance of DESIGN-BUILDER'S initial Submittals, to establish procedures for handling Submittals and processing Applications for Payment and Change Orders, and to establish a working understanding among the parties as to the Work.

3.4.5 PRECONSTRUCTION CONFERENCE(S). Prior to the Notice to Proceed with Construction being issued, conference(s) shall be held for review and acceptance of the DESIGN-BUILDER'S Critical Path Method (CPM) Schedule, Final Schedule of Values, personnel and Subcontractor list, to review mobilization requirements, to establish procedures for handling shop drawings and other Submittals and Applications for Payment, and to establish a working understanding among the parties as to the Work.

### 3.5 ASSUMPTION OF RISKS BY DESIGN-BUILDER

3.5.1 Except as otherwise provided in this Contract, DESIGN-BUILDER shall have a duty to anticipate and provide adequate contingencies for risks associated with the Work for the Project. DESIGN-BUILDER shall take into consideration, and factor into its Project Schedule and GMP, all Site conditions and difficulties involved in the completion of the Work, the variations in permitting time frames, and the time frames available to CITY for reviewing deliverables, schedules, and Applications for Payment. Given this duty, DESIGN-BUILDER should not request additional compensation or time to complete, if delays and complicating factors should have reasonably been anticipated.

3.5.2 DESIGN-BUILDER shall become familiar with and prepare for the continuing operations of the water treatment plant during the course of construction.

DESIGN-BUILDER'S GMP and Project Schedule, and any subsequent approved revisions thereto, shall sufficiently anticipate and include work delays due to plant operations.

3.5.3 DESIGN-BUILDER has ascertained such Site conditions as may be readily determined by inspection and inquiry, such as the location, accessibility and general character of the Site prior to executing this Contract.

3.5.4 The DESIGN-BUILDER assumes the risk for all costs associated with Site conditions which are foreseeable through the exercise of normal due diligence. It shall be the obligation of the DESIGN-BUILDER to fully investigate the Site and provide sufficient contingency amounts for conditions which are foreseeable and which may differ from those suggested by inspections and reports provided with the RFP, or any addenda thereto. Provided, however, this Section 3.5.4 is subject to the terms of Section 10.8 below.

**ARTICLE 4**  
**DESIGN-BUILDER'S DUTIES AND RESPONSIBILITIES**

4.1 GENERAL DUTIES AND OBLIGATIONS OF DESIGN-BUILDER RELATED TO ENTIRE WORK.

4.1.1 CITY has retained DESIGN-BUILDER to provide the Work described herein. Since CITY has entrusted the Work to the DESIGN-BUILDER, DESIGN-BUILDER shall use its professional expertise to protect the interest of the CITY at all times. The quality of DESIGN-BUILDER'S work shall be consistent with the requirements of this Contract and with prevailing industry standards. DESIGN-BUILDER shall insure that its fees charged for the Work are fair, reasonable and consistent with fees charged locally for similar work.

4.1.2 COMPLY WITH ALL LAWS AND REGULATIONS. The DESIGN-BUILDER shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work. If the DESIGN-BUILDER observes that any part of the Contract is contradictory to such laws, rules, and regulations, it shall notify the Project Manager promptly in writing. If the DESIGN-BUILDER performs any work that it knows or should know to be contrary to such laws, ordinances, rules, and regulations, DESIGN-BUILDER shall bear the cost for any such work performed.

4.1.3 FURNISH ALL WORK, LABOR AND MATERIALS. DESIGN-BUILDER shall provide or cause to be provided all design and construction services, and shall furnish and pay for, all labor, materials, equipment, tools, construction equipment and machinery, appliances, transportation, water, heat, fuel, power, light, telephone, and sanitary utilities, and all other utilities, facilities, services, and incidentals necessary for providing, performing and completing the Work, whether temporary or permanent, incorporated or to be incorporated in the Work, and necessary for the execution, testing, initial operation, and completion of the Work.

4.1.4 DESIGN-BUILDER understands and acknowledges that all documents and materials provided with the RFP, and any addenda, are general and preliminary, and that DESIGN-BUILDER shall not rely on the accuracy or completeness thereof. DESIGN-BUILDER acknowledges that its duties hereunder shall not be excused or discharged in

any respect based on the incompleteness or inaccuracy of any such documents or materials.

4.1.5 DUTY TO DESIGN AND CONSTRUCT WITHIN GMP. DESIGN-BUILDER shall design and construct the Project within the GMP. If CITY requests the DESIGN-BUILDER to revise or modify the Design-Build Documents at any time for compliance with the Contract, then such requests shall not relieve the DESIGN-BUILDER from its responsibility to deliver the Project within the GMP. In addition, DESIGN-BUILDER shall monitor its costs during the design and construction of the Project and immediately advise the Project Manager of any deviations. DESIGN-BUILDER shall submit a written explanation for such deviations, all of which are subject to CITY'S approval as set forth herein.

4.1.5.1 Should the DESIGN-BUILDER produce Final Construction Documents which cause the total cost of the Project to exceed the GMP, said excess costs shall be born exclusively by the DESIGN-BUILDER.

4.1.6 PERFORMANCE SPECIFICATIONS AND REQUIREMENTS FOR PROJECT. In developing and creating the Final Construction and other Design-Build Documents and in performing the Work generally, DESIGN-BUILDER shall, among other things:

4.1.6.1 Incorporate the requirements and criteria set forth in the RFP and any modifications, revisions and addenda to any of them. However, notwithstanding the foregoing, inaccurate provisions of the RFP, if any, shall not be incorporated into or considered a part of the Final Construction Documents, but shall be governed by the provisions of Article 3.1 above.

4.1.6.2 Comply with all governing laws, codes, regulations and ordinances of any governmental agency having or claiming to have jurisdiction over the Project;

4.1.6.3 Develop in greater detail the intent of DESIGN-BUILDER'S RFP Proposal, as submitted in response to the RFP and as accepted by the CITY;

4.1.6.4 Include all documents required for regulatory agency approvals.

4.1.7 ALTERNATIVE APPROACHES. DESIGN-BUILDER shall review with the CITY alternative approaches to design and construction of the Project to save time and costs whenever possible.

4.1.8 PROGRESS REPORTS. During design and construction, DESIGN-BUILDER shall keep CITY regularly advised of the progress and quality of all Work by providing Progress Reports every month in a form and content acceptable to Project Manager, advising CITY, among other things, of DESIGN-BUILDER'S adherence to or deviation from the Project Schedule. DESIGN-BUILDER shall advise CITY of any and all identified causes for deviating from the Project Schedule as soon as those causes become evident. Each monthly Progress Report shall include, but shall not be limited to, reports on:

- (i) progress of Work during the previous thirty (30) days; the status of design, permitting, Site development and construction activities;
- (ii) an analysis of overall progress and budget compliance with cash flow

- analysis and an affirmation that deliverables will be on time and within the GMP; and an overall percentage of completion estimate;
- (iii) if behind the Project Schedule, a proposed recovery plan;
  - (iv) list of problems and anticipated problems with corrective action planned or needed;
  - (v) an outline of proposed activities and key tasks during the coming month in a "30 Day Look Ahead" schedule;
  - (vi) any changes in personnel of the DESIGN-BUILDER or of its Professionals, Subconsultants or Subcontractors;
  - (vii) results of any inspections, tests or Site visits;
  - (viii) any major deliveries of materials or large equipment, (also to be included in "30 Day Look Ahead" schedule); and
  - (ix) any other reasonable information covering DESIGN-BUILDER'S performance hereunder.

4.1.8.1 Each Progress Report shall be received by the CITY by the 10th day of the following month. If the 10<sup>th</sup> day falls on a Saturday or Sunday, the progress report must be received on the first Monday following the 10<sup>th</sup> day.

4.1.9 . The Project Manager shall monitor DESIGN-BUILDER'S Work for compliance with Project standards and criteria, and may make recommendations and comments regarding the Work, solely for the protection of the CITY. However, DESIGN-BUILDER acknowledges that any such monitoring or recommendations by the Project Manager, or any failure of the Project Manager to monitor or make recommendations, shall not relieve the DESIGN-BUILDER of any of its obligations under this Contract. Any comments or suggestions to the DESIGN-BUILDER by the Project Manager, if adopted and followed by the DESIGN-BUILDER, shall not relieve the DESIGN-BUILDER of its sole authority and responsibility for the adequacy and accuracy of its professional, design, development, management and/or construction services, in accordance with generally accepted architectural, engineering, development and/or construction practices, and this Contract.

4.1.10 CUMULATIVE RESPONSIBILITIES, DUTIES AND OBLIGATIONS. The responsibilities, duties and obligations imposed upon DESIGN-BUILDER by this Contract, and the rights and remedies available to the CITY hereunder, shall be in addition to, and not a limitation of, any otherwise imposed or available by law, statute, regulation, code or ordinance.

#### 4.1.11 DESIGN-BUILDER'S PERSONNEL

4.1.11.1 Qualified Personnel. All professional and design services shall be performed by qualified engineers and other Professionals selected and retained and paid by DESIGN-BUILDER. All professional and consulting services shall be performed by the Professionals and qualified Subconsultants selected and paid and retained by DESIGN-BUILDER. All construction services shall be performed by DESIGN-BUILDER'S qualified personnel or qualified Subcontractors selected and paid and retained by

DESIGN-BUILDER or by its Subcontractors. DESIGN-BUILDER agrees, with respect to all Work to be provided and performed relating to professional services which, under Florida Statutes, require a license, certificate of authorization or other form of legal entitlement to practice such services, that it, its Subconsultants and Professionals shall employ and/or retain only personnel who are experienced, licensed, certified or otherwise legally entitled as aforesaid, to be responsible for all professional and consulting services to be provided pursuant to this Contract.

4.1.11.2 Responsibility for Personnel's Performance. DESIGN-BUILDER shall be responsible to the CITY for acts and omissions of DESIGN-BUILDER and DESIGN-BUILDER'S agents, employees, Professionals, Subconsultants, Subcontractors, and all other parties in privity of Contract with DESIGN-BUILDER and/or its Professionals, Subconsultants, or Subcontractors, which provide and/or perform any portion of the Work, including their agents and employees.

4.1.11.3 Design-Builder's Project Director. DESIGN-BUILDER agrees to employ and designate, in writing, a qualified (and, if required by law, a licensed) Professional to serve as DESIGN-BUILDER'S Project Director, who shall be approved by the CITY. The Project Director shall be authorized and responsible to act on behalf of DESIGN-BUILDER and shall have full authority to bind and obligate DESIGN-BUILDER on any matter arising under this Contract, unless substitute arrangements or individuals have been furnished to and approved by the CITY in writing. The Project Director shall be responsible for acting on DESIGN-BUILDER'S behalf to administer, coordinate and to interpret all aspects of the Work to be provided and performed under this Contract and to otherwise manage the contractual provisions and requirements set forth in this Contract, and all Change Order(s) issued hereunder. DESIGN-BUILDER agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise, coordinate and manage the Work provided and performed by DESIGN-BUILDER under this Contract.

4.1.11.4 Removal of Personnel. The DESIGN-BUILDER shall not change any of those persons named in its Proposal unless mutually agreed to by the Owner and DESIGN-BUILDER. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel DESIGN-BUILDER agrees that, within fourteen (14) days of receipt of a written request from CITY, which is based upon grounds of nonperformance or illegal activity, to promptly remove and replace DESIGN-BUILDER'S Project Director, or any other personnel employed or retained by DESIGN-BUILDER, or its Professionals, Subconsultants, or Subcontractors engaged by DESIGN-BUILDER to provide and/or perform the Work, or any portion thereof. Any proposed substitution shall be subject to CITY'S prior written consent, and said substitution shall be at no additional cost to the CITY. Notwithstanding the foregoing, nothing herein shall interfere nor be deemed to interfere with the right of DESIGN-BUILDER, or its Professionals, Subconsultants, or Subcontractors to terminate its or their employees, or with any employee's employment or right to terminate his or her employment with DESIGN-BUILDER or its Professionals, Subconsultants, or Subcontractors. DESIGN-BUILDER further agrees not to remove or reassign any members of its "Proposed Team" identified in its Proposal submitted in response to the RFP during the term of this Contract without first presenting explanations therefore and obtaining the CITY'S prior written consent.

4.1.11.5 Adequate Staffing for Timely Accomplishment of Work. DESIGN-BUILDER agrees to employ, engage, retain and/or assign an adequate number of personnel, and work additional shifts if necessary, throughout the period of this Contract so that all Work will be provided, performed and completed in a timely and diligent manner in accordance with the Project Schedule and this Contract.

4.1.12 PERMITS. DESIGN-BUILDER agrees to prepare all applications and other supporting documentation and information necessary to submit for, and obtain all reviews, approvals, permits, licenses and inspections needed, with respect to the design, Site development and Work necessary for completion of the Project, including the Final Construction Documents and further agrees to secure said reviews, approvals, permits, licenses and inspections. Any fees required to be paid for such reviews, approvals, permits, licenses or inspections shall be paid by DESIGN-BUILDER to each respective governmental agency. All CITY impact fees and sewer capacity fees shall be paid for by the CITY. DESIGN-BUILDER shall be similarly responsible for preparing all required applications and other required and supporting documentation and information necessary to submit and obtain any renewals and/or extensions of reviews, approvals, permits, licenses or inspections that may be required while this Contract is in effect. All Site design and permitting fees are the responsibility of the CITY.

4.1.13 COORDINATION. DESIGN-BUILDER shall be responsible for the management, coordination and supervision of all design, permitting, and construction means, methods, techniques, sequences and procedures for completion of the Work.

4.1.14 TESTS AND INSPECTIONS. DESIGN-BUILDER shall procure and furnish, at its sole cost and expense, all required tests and inspections for the Project, including but not limited to, structural, mechanical, chemical, electrical, geotechnical, construction, materials and other laboratory or on-Site tests, inspections and reports obtained and necessary for completion of design and construction. Such testing services shall be provided by qualified testing subconsultants independent of DESIGN-BUILDER and acceptable to the CITY. A testing program meeting the requirements for all Construction Work shall be clearly described in the Final Construction Documents.

4.1.14.1 If the Contract or laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than the DESIGN-BUILDER, the DESIGN-BUILDER shall coordinate and secure same.

4.1.14.2 DESIGN-BUILDER shall furnish the Project Manager with all test and inspection reports regardless of who ordered or the reason. For all inspections, tests, and approvals on any Work prepared, performed, or assembled away from the Site, the DESIGN-BUILDER shall furnish the Project Manager with the required certificates of inspection, testing, or approval. All tests will be in accordance with the methods prescribed by the American Society for Testing and Materials (ASTM) or such other organization(s) as may be appropriate to the particular requirement of the law or the Contract.

4.1.14.3 The CITY will be responsible for obtaining independent testing of materials. The CITY may at any time, at its option, obtain independent testing and inspections of the Work or any portion thereof. In such event, the DESIGN-BUILDER shall provide 48 hours

Notice to the Project Manager of readiness of the Work to be so tested and/or inspected and shall provide the testing agency prompt and full access to the Work. If the CITY'S independent testing and inspection indicates materials or Work in place that fail to pass acceptability tests, then DESIGN-BUILDER shall correct such materials or Work until acceptable test results are obtained. The costs to correct said materials or Work, as well as the costs of all such failed tests and re-tests, shall be borne solely by the DESIGN-BUILDER.

4.1.14.4 Neither observations by the Project Manager nor inspections, tests, or approvals by persons other than the DESIGN-BUILDER shall relieve the DESIGN-BUILDER of its obligations to perform the Work in accordance with the requirements of the Contract.

#### 4.1.15 UNCOVERING THE WORK

4.1.15.1 If any Work required to be inspected, tested or approved is covered contrary to the request of the Project Manager, the Work shall, if requested by the Project Manager, be uncovered for observation, inspection, testing or approval and replaced at the DESIGN-BUILDER'S expense.

4.1.15.2 If any Work has been covered which the Project Manager has not specifically requested to observe, and if the Project Manager considers it necessary or advisable that the covered Work be inspected or tested by others, the DESIGN-BUILDER, upon written request of the Project Manager, shall uncover, expose, or otherwise make available for observation, inspection, or testing that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is Defective, the DESIGN-BUILDER shall bear the expense of such uncovering, exposure, observation, inspection, testing, and satisfactory reconstruction. If, however, such Work is not found to be Defective, the DESIGN-BUILDER may be allowed an adjustment in the GMP or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction, if it makes a claim in accordance with the requirements of this Contract.

4.1.16 PATENT FEES AND ROYALTIES. The DESIGN-BUILDER shall pay all license fees and royalties and assume all costs associated with any invention, design, process, or device which is the subject of patent rights or copyrights held by others and is necessary for completion of the Work required by this Contract.

#### 4.1.17 PROTECTION OF PERSONS AND PROPERTY

4.1.17.1 DESIGN-BUILDER shall be solely responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work. DESIGN-BUILDER shall take precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- (i) employees of the DESIGN-BUILDER and its Professionals, Subconsultants, and Subcontractors, and any other persons on or about the Site, including but not limited to agents, employees and independent contractors of CITY, and of any other governmental authority or agency;
- (ii) the Work and the Project, including any and all materials and equipment to be incorporated therein; and

(iii) other property at or adjacent to the Site, or any portion thereof.

4.1.17.2 At a minimum the Design-Builder shall follow the Safety and Health Requirements attached hereto as **Exhibit B**.

4.1.17.3 The DESIGN-BUILDER shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. DESIGN-BUILDER shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. DESIGN-BUILDER shall notify owners of adjacent property and utilities when execution of Work may affect them prior to start of Work. All damage, injury, or loss to any property caused directly or indirectly, in whole or in part, by the DESIGN-BUILDER, any Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by the DESIGN-BUILDER.

4.1.17.4 Reserved.

4.1.17.5 The DESIGN-BUILDER shall designate a responsible member of its organization whose duty shall be the prevention of accidents at the Site. During construction, this person shall be the DESIGN-BUILDER'S on-site superintendent unless otherwise designated in writing by the DESIGN-BUILDER to the Project Manager.

4.1.17.6 The DESIGN-BUILDER shall immediately notify the Project Manager of all events involving personal injuries to any person on the Site, whether or not such person was engaged in the construction of the Project, or resulting in property damage of any amount, and shall file a written report on such injury or property damage with the Project Manager within five (5) days of the occurrence.

4.1.17.7 In emergencies affecting the safety of persons, the Work, or property at the Site or adjacent thereto, the DESIGN-BUILDER, is obligated to prevent or mitigate threatened damage, injury, or loss. DESIGN-BUILDER shall give the Project Manager written notice of the emergency situation and actions taken within 24 hours of the incident.

4.1.18 SECURITY. During Construction Work and through the Substantial Completion date, DESIGN-BUILDER shall be responsible for keeping the Site and the Project, as well as all materials located on or off the Site, secure from damage or theft. DESIGN-BUILDER agrees to repair any damage to the Site or the Project and to replace any materials damaged, lost or stolen from the Site or Project at its sole expense.

4.1.19 SUBSTITUTE MATERIALS AND EQUIPMENT. If the DESIGN-BUILDER wishes to furnish or use a proposed substitute of materials or equipment after the GMP has been established, it shall make written application to the Project Manager for consideration of such substitute. Requests for substitutions shall be subject to review and approval by the CITY and the Project Manager. No substitute shall be incorporated into the Design-Build Documents or ordered or installed without the prior written approval from the Project Manager. In addition to the information described below, the application shall contain an itemized estimate of all costs or credits that may result directly or indirectly from acceptance of such substitute, including costs of redesign, delays and maintenance all of which shall be considered by the Project Manager in evaluating the proposed substitute. Approval of any change in costs as a result of acceptance of the

substitute by the Project Manager shall be by adjustment within the GMP or by Change Order.

4.1.19.1 All applications for substitution by the DESIGN-BUILDER shall be reviewed and approved by the Engineer of Record prior to its submittal to the Project Manager.

4.1.19.2 For proposed substitutions during construction, the DESIGN-BUILDER and Engineer of Record shall certify in writing that the proposed substitute will perform the duties imposed by the Final Construction Documents, and shall be equal or equivalent to that specified.

#### 4.1.20 USE OF THE SITE

4.1.20.1 The DESIGN-BUILDER shall confine its equipment, the storage of materials and equipment, and the operations of its workers to the areas permitted by law, ordinances, permits, or the requirements of the Contract. The DESIGN-BUILDER shall not unreasonably encumber the Site with materials and equipment. Any loss or damage to any equipment or materials of DESIGN-BUILDER or any Subcontractor is solely at the risk of the DESIGN-BUILDER.

4.1.20.2 The DESIGN-BUILDER shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure. The DESIGN-BUILDER shall not subject any part of the Project or adjacent property to stresses or pressures that will endanger them. Prior to beginning Work on the Project, DESIGN-BUILDER shall supply to the Project Manager a list of all employees, Subcontractors, and Subconsultants who will be working on the Site and shall state the anticipated duration of each individual's Work on the Site. DESIGN-BUILDER shall update this list from time to time, as necessary, to reflect any changes to the list during the course of the Work. DESIGN-BUILDER shall be responsible for securing the Site prior to departure each day.

#### 4.1.21 SUBMITTALS AND SAMPLES

4.1.21.1 The DESIGN-BUILDER shall provide Submittals at a time sufficiently early enough to allow review, and to accommodate the rate of construction progress as indicated in the Project Schedule.

4.1.21.2 After checking and verifying all field measurements, the DESIGN-BUILDER shall stamp with verification approval and promptly submit to the Project Manager for review, who shall review and either reject or provide stamped approval of all Submittals and samples required by the Contract. The DESIGN-BUILDER shall stamp the Submittal to certify in writing that the Submittal will perform the duties imposed by the Final Construction Documents. If rejected by the Project Manager, the Submittal shall be corrected, with the revisions to the former Submittal highlighted prior to resubmittal. The Project Manager shall review the resubmittal and either reject or provide stamped approval. The data shown on or with the Submittals shall be complete with respect to dimensions, materials and any other information necessary to enable the Project Manager to review the Submittal as required. At the time of each submission, the DESIGN-BUILDER shall give notice to the Project Manager of all deviations that the Submittal or sample may have from the requirements of the Contract.

4.1.21.3 The Project Manager will review and either approve or reject each Submittal and sample. The Project Manager's approval will not relieve the DESIGN-BUILDER of

its responsibility for any deviations from the requirements of the Final Construction Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The DESIGN-BUILDER shall make any corrections required by the Project Manager and resubmit the required number of corrected copies until approved. Except as otherwise provided within the Contract, the Project Manager will return prints of each Submittal to the DESIGN-BUILDER, with comments noted thereon, within 14 days following their receipt by the Project Manager.

4.1.21.4 The Project Manager shall review and either approve or reject all Submittals and samples. The Project Manager's approval shall not relieve the DESIGN-BUILDER of its responsibility to secure separate approvals of applicable Professional(s), or for any deviations from the requirements of the Final Construction Documents.

4.1.21.5 No Work requiring a Submittal or sample submission shall commence until the submission has been approved by the Project Manager. Rejection of Submittals by the Project Manager shall not relieve the DESIGN-BUILDER of its responsibility to meet the milestones within the Project Schedule. A copy of each approved Submittal and each approved sample shall be kept in good order by the DESIGN-BUILDER at the Site and shall be available to the Project Manager.

4.1.21.6 To facilitate review, the DESIGN-BUILDER shall number consecutively each Submittal. This numbering system shall be in order of Submittal. Any resubmittal required shall have the same number as the original Submittal followed by a notation signifying that this is a second or third Submittal (e.g. #14 2nd Submittal). All Submittals shall provide a space for the DESIGN-BUILDER'S and Project Manager's review stamp, preferably on the first page. In addition, all Submittals shall contain the form attached hereto as **Exhibit C**. The review of a particular Submittal will be undertaken only if the proper form is attached.

#### 4.1.22 WORK BY OTHERS

4.1.22.1 The CITY may perform additional Work related to the Project with its own forces or may authorize additional work by others directly contracting with DESIGN-BUILDER. The DESIGN-BUILDER shall provide the other contractors who are parties to such direct contracts, including, but not limited to, the other contractor's employees, agents, subcontractors, and suppliers (or the CITY'S forces performing the additional Work), access to the Site and reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work, and shall properly connect and coordinate its Work with theirs. The DESIGN-BUILDER is not entitled to exclusive use of the Site. The DESIGN-BUILDER is not responsible for any actions of other contractors which may compromise the security or safety on the Site.

4.1.22.2 If any part of the DESIGN-BUILDER'S Work depends (for proper execution or results) upon the Work of any such other contractor (or the CITY), the DESIGN-BUILDER will inspect and promptly report to the Project Manager in writing any defects or deficiencies in such Work that render it unsuitable for such proper execution and results. DESIGN-BUILDER'S failure to so report shall constitute an acceptance of the other Work, except as to defects and deficiencies which may appear in the other Work after the execution of DESIGN-BUILDER'S Work. DESIGN-BUILDER shall be entitled to an extension of time and/or reasonable additional compensation as agreed upon by the

DESIGN-BUILDER and the CITY, but shall not be entitled to damages related to any delay caused by other contractors not under the authority and control of the DESIGN-BUILDER, or any delay caused by the CITY.

4.1.22.3 DESIGN-BUILDER shall perform all cutting, fitting, and patching of its Work that may be required to make its several parts come together properly, and fit it to receive or be received by the Work of other contractors or the CITY. DESIGN-BUILDER shall not endanger any Work of others by cutting, excavating, or otherwise altering such other Work and will only cut or alter such other Work with the written consent of the Project Manager, and only if such alteration will not increase the GMP or extend the Project Schedule.

4.1.23 BINDING THE PROFESSIONALS, SUBCONSULTANTS AND SUBCONTRACTORS. The DESIGN-BUILDER agrees to bind specifically every Professional, subconsultant and subcontractor to the applicable terms and conditions of the Contract for the benefit of the CITY. All Work performed for the DESIGN-BUILDER by a Professional, Subconsultant or Subcontractor shall be pursuant to an appropriate written Contract between the DESIGN-BUILDER and the Professional, Subconsultant or Subcontractor as applicable. The CITY shall be expressly named as a third-party beneficiary to any Contract between the DESIGN-BUILDER and its Professional and Subconsultant.

#### 4.2 DUTIES AND OBLIGATIONS OF DESIGN-BUILDER SPECIFICALLY RELATED TO PROFESSIONAL SERVICES.

4.2.1 The Design Professional owes a duty to the CITY to meet the Project's intended quality and scope and to serve the best interest of the CITY in meeting the CITY'S needs. The Design Professional shall provide input at all stages of the Design-Build process and shall be involved in the decision making process in order to provide the highest and best value to the CITY within the requirements of the Contract.

4.2.2 RULES OF THE BOARD OF PROFESSIONAL REGULATION AND DUTY TO PROVIDE SIGNED AND SEALED DOCUMENTS. DESIGN-BUILDER'S Professional shall sign and seal all design documents prepared by DESIGN-BUILDER per the requirements of all laws, rules and regulations of any governmental authority with jurisdiction over the Project, and DESIGN-BUILDER shall assume all responsibility for such plans and design documents. All Final Construction Documents prepared by DESIGN-BUILDER shall be signed and sealed per the requirements of Chapters 471 and 481, Florida Statutes, and the related Rules of the Florida Department of Business and Professional Regulation.

4.2.3 DOCUMENTATION RELATED TO PROPOSED MODIFICATIONS TO DESIGN-BUILD DOCUMENTS AND CONSTRUCTION. During this Project, the DESIGN-BUILDER, through the appropriate Professional, shall maintain a detailed log and documentation of all communications between DESIGN-BUILDER and CITY related to any and all actual and proposed changes and modifications to any aspect of the Design-Build Documents and construction of the Project. Copies of the above shall be transmitted to the Project Manager as part of DESIGN-BUILDER'S monthly Progress Reports.

4.2.4 DESIGN REVIEWS/APPROVALS. As set forth below, there shall be at least the following formal design reviews and approvals by the CITY for Design of the Project:

- (i) Plans at 30, 60 and 90 percent completion; and
- (ii) Approval of Final Construction Documents by CITY following incorporation of any changes necessitated by former design reviews or the permitting process (which changes shall be highlighted for CITY'S review).

4.2.5 TIME FRAMES FOR DESIGN APPROVALS/REFLECTION ON PROJECT SCHEDULE. DESIGN-BUILDER shall reflect the foregoing design reviews and approvals on the Project Schedule and shall allow the following times from date of submittal for the CITY to receive the Design-Build Documents submitted for each Design Approval, review them, and for the CITY to approve, approve with conditions, or disapprove the submitted Design-Build Documents:

- (i) For approval of Final Construction Documents: 14 days (provided DESIGN-BUILDER shall highlight those changes to the Construction Documents that were necessitated by the permitting process).

DESIGN-BUILDER shall also be responsible for taking any actions necessary to maintain its Project Schedule, including any acceleration necessary for subsequent resubmittal of the aforementioned by DESIGN-BUILDER and re-review by CITY, in the event of initial disapproval.

4.2.6 DESIGNATION OF PROFESSIONAL(S) OF RECORD AND PROVISION OF BASIC SERVICES. Prior to beginning Work, DESIGN-BUILDER shall designate in writing the name of its Engineer of Record and other Professionals who will be responsible for signing and sealing Design-Build Documents. DESIGN-BUILDER shall indicate the specific tasks and areas of responsibilities for these individuals and firms. The DESIGN-BUILDER shall provide Basic Design and Construction Administration services under this Contract as outlined below.

4.2.7 SERVICES AT DESIGN SERVICES - PHASE AND PREPARATION OF FINAL CONSTRUCTION DOCUMENTS

4.2.7.1 Consultant agrees to perform all the design services and provide all the materials requested by RFP No. 20173 and described in the Scope of Work which is attached hereto as **Exhibit A** and incorporated herein by this reference, which are hereinafter collectively referred to as the "Scope of Services."

4.2.7.2 Based upon review by the CITY, and obtaining of all permits and regulatory approvals, DESIGN BUILDER shall incorporate any review comments into all the Construction Documents and resubmit them for CITY'S approval. When approved, the revised documents shall then constitute the Final Construction Documents.

4.2.8 PROFESSIONAL SERVICES AT CONSTRUCTION ADMINISTRATION PHASE.

4.2.8.1 The Construction Phase shall commence upon issuance of Notice to Proceed with Construction Services by CITY. The DESIGN-BUILDER and each appropriate Professional shall provide Construction Administration services as provided

herein, as required by the Final Construction Documents, and as required by authorities having jurisdiction over the Project.

4.2.8.2 The DESIGN-BUILDER shall visit the Site at intervals appropriate to the stage of construction, or as otherwise required by CITY and the Final Construction Documents, to become generally familiar with the progress and quality of the Work during the Construction Phase, and to determine in general if the Work is proceeding in accordance with the Final Construction Documents. On the basis of such on-Site observations, the DESIGN-BUILDER shall keep the CITY informed by means of regular written status reports of the progress and quality of the Work, and shall guard the CITY against defects and deficiencies in the execution of the Work.

4.2.8.3 The submission of an Application for Payment by the DESIGN-BUILDER shall constitute a representation by the DESIGN-BUILDER that the construction Work has progressed to the point indicated and that the construction Work is in accordance with the Final Construction Documents.

4.2.8.4 The DESIGN-BUILDER shall be required to identify Work that is not in accordance with the Final Construction Documents and to give written notice thereof to the Project Manager. Whenever, in the opinion of the Project Manager, it is necessary or advisable to ensure the Work's conformance with the intent of the Final Construction Documents, the DESIGN-BUILDER shall have a duty to require a special inspection or testing of the Work at no additional cost to the CITY and at no delay to the Project Schedule.

4.2.8.5 Prior to incorporation into the Work, and prior to approval by the CITY, the appropriate Professional(s) shall review and approve all Submittals (including shop drawings, samples and test reports), substitutions, and Change of Work proposals for compliance with the design intent and governing laws, codes, regulations and ordinances, and if applicable, shall perform activities necessary for DESIGN-BUILDER to obtain approvals for such from authorities having jurisdiction over the Project.

4.2.8.6 The Engineer of Record shall approve certifications of Substantial Completion, subject to acceptance by the CITY.

4.2.8.7 Prior to Final Completion, the appropriate Professional(s) shall review the completed Punch List Work for conformance with the Final Construction Documents, and the DESIGN-BUILDER shall certify to CITY in writing that the Work, including all Punch List items, has been completed in accordance with the Final Construction Documents, the Contract, all Change Orders, and all applicable laws, codes, regulations and ordinances. Such certification shall be subject to acceptance by CITY.

4.2.8.8 The appropriate Professional(s) shall review warranty Work provided by the DESIGN-BUILDER for compliance with the Final Construction Documents during the term of this Contract, including any warranty periods set forth herein.

4.2.8.9 The appropriate Professional(s) shall review and approve the DESIGN-BUILDER'S record documents and Final As-Built Construction Documents prior to submittal to the CITY.

4.2.8.10 In addition to other deliverables required during the Construction Phase as described in other portions of this Contract, the DESIGN-BUILDER shall submit the

following deliverables with the assistance of the appropriate Professional(s), as required by this Contract and the Final Construction Documents:

- (i) Project meeting minutes which are required for each meeting attended, to include a listing of attachments and attendees.
- (ii) Reports of all field meetings and visits.
- (iii) Monthly construction status reports indicating progress of the Work, deficiencies observed, and actions taken or required.
- (iv) Shop drawings, Substitutions and other Submittals.
- (v) Monthly logs of all Requests for Information, shop drawing logs, and action item lists.
- (vi) Monthly logs indicating the status of all Proposed Change Requests and Change Orders.
- (vii) Monthly schedule of all tests and inspections, and copies of all resulting reports.
- (viii) Safety meeting minutes.

#### 4.3 DUTIES AND OBLIGATIONS OF DESIGN-BUILDER SPECIFICALLY RELATED TO CONSTRUCTION SERVICE

4.3.1 CRITICAL PATH METHOD (CPM) CONSTRUCTION SCHEDULE. The Construction Phase shall commence with issuance of Notice to Proceed with Construction Services by CITY. Subsequent to approval of Final Construction Documents and prior to the commencement of construction, DESIGN-BUILDER shall provide a CPM construction schedule illustrating the construction portion(s) of the Project Schedule. The CPM Schedule shall be prepared in accordance with the standards outlined in the Associated General Contractors' Publication, "The Use of CPM in Construction," and shall reflect timely completion in accordance with the Contract. During the Construction Phase, the CPM Schedule shall be updated on a monthly basis and submitted with the monthly Progress Report.

4.3.2 FINAL SCHEDULE OF VALUES. Prior to Issuance of Notice to Proceed with Construction Services, DESIGN-BUILDER shall submit a Final Schedule of Values, in CSI format, for review and approval by CITY.

4.3.3 TEMPORARY UTILITIES. DESIGN-BUILDER shall provide all facilities and equipment that are necessary and adequate for the performance of the Work, and which conform to the requirements of all applicable codes and authorities having or claiming jurisdiction, including but not limited to, power and lighting, water supply, sanitation and communications.

#### 4.3.4 SUPERVISION AND SUPERINTENDENCE

4.3.4.1 The DESIGN-BUILDER shall supervise and direct the Work efficiently and with its best skill and attention. The DESIGN-BUILDER shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction unless specifically addressed otherwise in the Contract. The DESIGN-BUILDER shall be

responsible for seeing that the finished Work complies with the Contract. The DESIGN-BUILDER shall cooperate with, and be responsible for coordination of the Work with, other contractors and/or utilities at the Site. The DESIGN-BUILDER shall attend meetings as requested by the Project Manager, in addition to those required by this Contract.

4.3.4.2 The DESIGN-BUILDER shall designate a competent English-speaking resident superintendent to supervise the Work at all times during its progress and who shall not be replaced without written notice to the Project Manager except under extraordinary circumstances. The superintendent shall be the DESIGN-BUILDER'S representative at the Site and shall have authority to act on behalf of the DESIGN-BUILDER. All written communications given to the superintendent shall be as binding as if given to the DESIGN-BUILDER.

4.3.4.2 The DESIGN-BUILDER shall designate a 24-hour contact person to be on call for non-working 24-hour emergencies. DESIGN-BUILDER shall provide contact information for the contact person and shall keep the information current upon any changes.

4.3.5 LABOR, MATERIALS AND EQUIPMENT. The DESIGN-BUILDER shall provide and pay for competent, suitable, qualified personnel to survey and lay out the Work and perform construction as required by the Contract. The DESIGN-BUILDER shall at all times maintain good discipline and order on the Site.

4.3.6 DIVISION OF SUBCONTRACTS. The divisions and sections of the specifications and the identifications of any drawings that make up the Final Construction Documents shall not control the DESIGN-BUILDER in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

4.3.7 IDENTIFICATION OF SUBCONTRACTORS, VENDORS AND SUPPLIERS. After receipt of the Notice to Proceed with Construction Services by CITY, the DESIGN-BUILDER shall submit to the Project Manager a list of all Subcontractors and all such other persons and organizations whom the DESIGN-BUILDER intends to utilize in performing portions of the Work. The DESIGN-BUILDER shall indicate the corresponding line item as shown on the Final Schedule of Values that each Subcontractor will be working under.

4.3.8 Reserved.

4.3.9 EXISTING UTILITIES. Prior to commencing the Construction Phase, the DESIGN-BUILDER shall be responsible for verification and location of all utilities to the extent that the utilities can be reasonably located. The DESIGN-BUILDER shall, at a minimum, contact all utility companies for the purpose of determining all utilities located by the utility companies. Furthermore, the DESIGN-BUILDER shall be responsible for discovery of existing underground installations, in advance of excavating or trenching, by contacting all local utilities, and by prospecting to ascertain that the utilities shown or otherwise identified are in the area shown. The CITY shall not be liable for any damage or delay caused by any utility line that was or could have been identified by the DESIGN-BUILDER using reasonable means. If DESIGN-BUILDER fully performs its due diligence investigation with respect to existing utilities prior to the commencement of Work, and DESIGN-BUILDER is subsequently delayed by an unknown existing utility conflict, the

DESIGN-BUILDER may make a claim in accordance with the requirements of the Contract for an extension of time and reasonable compensation or both but in no event will the DESIGN-BUILDER be entitled to any damages from the CITY.

4.3.10 INSPECTION OF CONSTRUCTION. In accordance with the DESIGN-BUILDER'S Site Safety Plan, DESIGN-BUILDER shall permit the CITY, its agents, employees, representatives and subconsultants, and any interested governmental authority or regulatory agency, to enter upon the Site at any time to inspect the Work, the Project and all materials used or to be used in the construction of the Project that may be stored on the Site. The DESIGN-BUILDER shall provide proper facilities for such access and observation of the Work and also for any inspection or testing.

4.3.11 DUTY TO RESPOND TO REQUEST FOR PROPOSALS. DESIGN-BUILDER shall promptly prepare and submit to the CITY, at CITY'S request, reasonable Change of Work Proposals.

4.3.12 PROTECTION OF EXISTING FACILITIES. Project work will take place at an active Water Treatment Plant that is to remain in operation at all times. Construction activities may require work around active facilities not associated with this Project. As such, DESIGN-BUILDER shall protect all existing utilities, and any portions of the Project, at or adjacent to the Site which are not designated for removal. Any damage to existing facilities that impacts the operation of the treatment plant, as determined by the Project Manager, shall be immediately fixed under an emergency basis by the DESIGN-BUILDER. The DESIGN-BUILDER shall restore damaged or temporarily relocated utilities and affected areas to a condition equal to or better than they were prior to such damage or temporary relocation.

4.3.13 QUALITY OF MATERIALS AND EQUIPMENT. All materials and equipment shall be new and of good quality, unless otherwise provided in the Contract. If required by the Project Manager, the DESIGN-BUILDER shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

4.3.14 COMPLY WITH MANUFACTURER INSTRUCTIONS. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processors.

4.3.15 CLEANING UP. The DESIGN-BUILDER shall maintain the Site free from accumulations of waste materials, rubbish, and other debris resulting from the Work, on a daily basis or as required. At the completion of the Work, the DESIGN-BUILDER shall remove all waste materials, rubbish, and debris from the Site, as well as all tools, construction equipment and machinery and surplus materials, and will leave the Site clean and ready for occupancy by the CITY. In addition to any other rights available to CITY under the Contract, the DESIGN-BUILDER'S failure to maintain the Site may result in withholding of any amounts due DESIGN-BUILDER. The DESIGN-BUILDER will restore to original condition those portions of the Site not designated for alteration by the Contract.

4.3.16 RECORD DOCUMENTS. The DESIGN-BUILDER shall keep at the Site and in good order one record copy of the Final Construction Documents and all Shop

Drawings. These documents shall be annotated on a continuing basis to show all changes made during the construction process. DESIGN-BUILDER shall provide record documents whenever requested. These shall be available to the Project Manager for inspection during the Construction Phase and shall be submitted to the CITY prior to acceptance of Final Completion by the CITY.

4.3.17 FIELD OFFICE. The Design-Builder shall provide a field office at the job site fully equipped with including but not limited to the following: power, water, internet, and bathroom facilities.

4.4 RESPONSIBILITY OF DESIGN-BUILDER FOR QUALITY AND CONFORMANCE OF WORK. DESIGN-BUILDER represents that it shall be responsible for:

- (i) the functional soundness and structural integrity of the Work, the Project and the Final Construction Documents,
- (ii) the professional quality, technical adequacy, accuracy and legal sufficiency and compliance of the Work, the Project and the Final Construction Documents,
- (iii) timely completion and coordination of the Project and the Final Construction Documents, and
- (iv) other Work and materials performed, provided, and/or furnished by DESIGN-BUILDER or its Professionals, Subconsultants, and/or Subcontractors.

4.4.1 CORRECTION OF WORK AFTER FINAL COMPLETION. CITY agrees to promptly provide DESIGN-BUILDER with written notice of its discovery of defective or non-conforming Work after the Final Completion provided the discovery falls within the time frames identified in paragraph 11.1.15. The DESIGN-BUILDER shall promptly, without cost to the CITY and in accordance with the CITY'S written instructions, either correct such Defective or non-conforming Work, or remove it from the Site and replace it with non-Defective Work. If the DESIGN-BUILDER does not promptly comply with the terms of such instructions, the CITY may have the Defective Work corrected, removed, or replaced. The DESIGN-BUILDER will pay the actual cost of correction, removal or replacement of the Defective Work.

4.4.2 ACCEPTANCE OF DEFECTIVE WORK. If, instead of requiring correction or removal and replacement of Defective Work the CITY prefers to accept it, the CITY may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order incorporating the necessary revisions in the Contract, including an appropriate reduction in the GMP, shall be issued. If the acceptance occurs after approval of final payment, the DESIGN-BUILDER shall pay to the CITY an appropriate sum to compensate for the defect in the Work.

4.4.3 DESIGN-BUILDER'S DUTY TO PROCEED WITH WORK IN THE EVENT OF DISPUTE. In the event of a dispute as to the character, quality, amount or value of the Work, the CITY shall have the right to decide such issues and the DESIGN-BUILDER shall proceed diligently with performance of the Work as directed by the CITY, provided

DESIGN-BUILDER may reserve its rights to object to CITY'S decision and directive by so notifying the CITY in writing.

4.4.4 CITY'S REVIEW AND APPROVAL OF DESIGN-BUILD DOCUMENTS SHALL NOT RELIEVE DESIGN-BUILDER OF RESPONSIBILITY. CITY'S receipt, review, and approval of the Final Construction Documents, including all Design-Build Documents, and any incidental professional services, Work and materials furnished hereunder by DESIGN-BUILDER, or its Professionals, Subconsultants, or Subcontractors, shall not in any way relieve DESIGN-BUILDER of its responsibility for the adequacy, sufficiency, efficacy, completeness and/or accuracy of the Design-Build Documents.

4.4.5 CITY'S INSPECTION AND OBSERVATION OF CONSTRUCTION SHALL NOT RELIEVE DESIGN-BUILDER OF RESPONSIBILITY. CITY'S inspection and observation of Defective Work, absent an express written waiver of such defect in clear and unambiguous terms, shall not relieve DESIGN-BUILDER of responsibility for the adequacy, sufficiency, efficacy, completeness and/or accuracy of the Work, or any portion thereof.

4.4.6 CITY'S PAYMENT SHALL NOT RELIEVE DESIGN-BUILDER OF RESPONSIBILITY. CITY'S payment for any of DESIGN-BUILDER'S Work shall not be intended, and shall not be construed, to operate as a waiver of any of the CITY'S rights under this Contract, or any cause of action it may have arising out of DESIGN-BUILDER'S performance or non-performance under this Contract.

**ARTICLE 5**  
**CITY'S DUTIES AND RESPONSIBILITIES**  
**PROJECT MANAGER'S STATUS**

5.1 DESIGNATION OF PROJECT MANAGER

5.1.1 CITY agrees after the execution of this Contract to advise DESIGN-BUILDER, in writing, of the person designated to serve and act as Project Manager. The CITY shall issue all communications to the DESIGN-BUILDER and take all actions through the Project Manager except for authorization required by Change Order pursuant to Article 10 – Changes to the Work and other limitations expressly provided for in this Contract.

5.1.2 The Project Manager shall be available within a reasonable period of time, with reasonable prior written notice given by DESIGN-BUILDER, to meet and/or consult with DESIGN-BUILDER on matters pertaining to the Work provided and performed by DESIGN-BUILDER.

5.1.3 The Project Manager shall have the authority to manage and administer the Project, unless the DESIGN-BUILDER is otherwise notified by the CITY Manager or appropriate designee. The Project Manager will provide direct contact and communication between CITY and DESIGN-BUILDER with respect to providing information, assistance, guidance, coordination, and review of the DESIGN-BUILDER'S Work pursuant to this Contract and any authorized Change Order(s). The Project Manager shall not be authorized to, and shall not, issue any verbal or written request or

instruction or approval to DESIGN-BUILDER that might have the effect, or that might be interpreted to have the effect, of modifying or changing this Contract in any respect.

5.2 RESIDENT ENGINEER AND OTHER PERSONNEL. The CITY may furnish a full or part-time Resident Engineer and other personnel to assist the Project Manager in carrying out his/her duties pertaining to the Project.

5.3 FURNISHING OF SITE. The CITY shall furnish the Site upon which the construction Work is to be done, rights-of-way for access thereto, and such other lands which are designated for use by the DESIGN-BUILDER. The DESIGN-BUILDER shall provide for all additional lands and access thereto that may be required for temporary construction facilities, or storage of materials and equipment.

5.4 MAKING PAYMENTS. The CITY shall make payments to the DESIGN-BUILDER in accordance with the provisions in Article 8.

#### 5.5 PROJECT MANAGER'S STATUS

5.5.1 The Project Manager shall review the Design-Build Documents and shall recommend approval or rejection of the Design-Build Documents.

5.5.2 The Project Manager shall review the DESIGN-BUILDER'S Submittals including requests for substitutions, shop drawings, product data, samples and test reports, as necessary in the opinion of the Project Manager to determine conformance with the Final Construction Documents.

5.5.3 The Project Manager shall conduct field visits as necessary to determine that in the opinion of the Project Manager, construction is progressing in accordance with the Final Construction Documents. The Project Manager will attend regular progress meetings.

5.5.4 The Project Manager shall review all Applications for Payment submitted by the DESIGN-BUILDER and shall provide proper certification to the best of the Project Manager's knowledge and in the opinion of the Project Manager in order to support the approval of such payment applications or shall provide the basis for recommending rejection.

5.5.5 The Project Manager shall review any changes to the Final Construction Documents proposed by the DESIGN-BUILDER for conformance with the Design Criteria Package and shall recommend approval or rejection of the same.

5.5.6 The Project Manager shall conduct field visits to determine the dates of Substantial and Final Completion, receive and review written warranties and related closeout documents required by the Final Construction Documents and this Contract, and shall review and forward the DESIGN-BUILDER'S final Application for Payment to the CITY.

5.5.7 The Project Manager shall certify to the best of its knowledge that the completed facility meets the intent of the Final Construction Documents.

5.5.8 Limitations on Project Manager's Responsibilities. Neither the Project Manager's authority to act under this Article or elsewhere in the Contract, nor any decision made in good faith to exercise such authority, shall give rise to any duty or responsibility

of the Project Manager to the DESIGN-BUILDER, any Professional, Subconsultant or Subcontractor, or any of their agents or employees.

5.5.8.1 The Project Manager shall not be responsible for the DESIGN-BUILDER'S construction means, methods, techniques, sequences, or procedures or the safety precautions and programs used. The Project Manager shall not be responsible for the DESIGN-BUILDER'S failure to perform the Work in accordance with the Contract.

5.5.8.2 The Project Manager shall not be responsible for the acts or omissions of the DESIGN-BUILDER, any Professionals, Subconsultants or Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

## **ARTICLE 6** **RELATIONSHIP OF PARTIES**

6.1 CITY'S RIGHTS DURING DESIGN-BUILD PROCESS. Notwithstanding anything to the contrary set forth herein, the CITY shall have the absolute and continuing right, but not the obligation, to inspect and oversee all aspects of the design and construction of the Project, and DESIGN-BUILDER shall grant to the CITY full and unlimited access to the Site and all construction Sites at all times to enable the CITY to fully exercise its rights hereunder. The DESIGN-BUILDER shall also grant the CITY reasonable access to the offices of the design Professional(s) for observation of the progress of design Work. The DESIGN-BUILDER understands and agrees that the CITY shall have the right, but not the obligation, to fully inspect the Work to its satisfaction prior to taking possession of any part thereof.

6.2 CITY AS THIRD-PARTY BENEFICIARY; CORRELATION AND INTENT OF DOCUMENTS. Nothing contained in this Contract or any or all of DESIGN-BUILDER'S Contracts with its Subconsultants or Professionals shall create a contractual relationship between the CITY and any third party. However, the parties understand and agree that the CITY is an intended third-party beneficiary of all of DESIGN-BUILDER'S Contracts and subcontracts for Design-Build services. DESIGN-BUILDER shall require that all of its contracts with its Professionals and Subconsultants expressly provide for the CITY to be an intended third-party beneficiary of such contracts so as to enable CITY to maintain a cause of action directly against such Professionals and Subconsultants as necessary for any errors and omissions related to this Project. DESIGN-BUILDER shall provide evidence of such contractual provisions to CITY upon request, and DESIGN-BUILDER agrees not to modify such provisions.

6.2.1 DESIGN-BUILDER shall incorporate all the applicable obligations of this Contract into all of its respective contracts, subcontracts, supply contracts, purchase orders and insurance policies.

6.2.2 The CITY shall not be responsible or liable for, or assume any obligations whatever for, any Contract entered into between any Professional, Subconsultant, or Subcontractor and the DESIGN-BUILDER, or any other Professional, Subconsultant or Subcontractor. The CITY shall not be responsible for any payments due and/or owing to any Professional, Subconsultant or Subcontractor.

6.3 DESIGN-BUILDER AS INDEPENDENT CONTRACTOR. DESIGN-BUILDER and its Professionals, Subconsultants, and Subcontractors shall remain

independent contractors and shall have no power to bind the CITY, nor shall any of them represent that they have any power to bind the CITY, or to assume or create any obligations, expressed or implied, on behalf of the CITY. DESIGN-BUILDER, in providing and performing the Work required pursuant to this Contract, shall only represent CITY in the manner and to the extent specifically set forth in writing in this Contract and as provided in any written Change Order(s) issued hereunder. CITY neither assumes nor accepts any obligation, commitment, responsibility or liability which may result from any representation(s) by DESIGN-BUILDER not specifically provided for and authorized as stated hereinabove. DESIGN-BUILDER shall promote the best interests of the CITY with respect to any performance of the Work under this Contract.

6.4 NO PARTNERSHIP OR JOINT VENTURE. Nothing contained in this Contract shall be deemed to create a partnership or joint venture relationship between the DESIGN-BUILDER and the CITY.

6.5 THE CITY'S ACTION FOR THE CITY'S OWN PROTECTION ONLY. The authority herein conferred upon the CITY and any action taken by the CITY or any of its agents or employees in making inspections of the Site, procuring sworn statements and/or waivers of lien, and/or reviewing and approving any portion of the Design-Build Documents before or after their creation will be taken by the CITY, Project Manager, User Agency and by their agents or employees for their own protection only. Neither the CITY, User Agency, nor the Project Manager, nor any of their agents or employees, shall be deemed to have assumed any responsibility of DESIGN-BUILDER or any other person or entity as a result of any such action herein authorized or taken by them with respect to furthering the proper construction and equipping of the Project, performance of any construction, contracts, or prevention of claims from construction liens.

6.6 GOOD FAITH AND FAIR DEALING. CITY and DESIGN-BUILDER shall assume toward one another a relationship of good faith and fair dealing.

## **ARTICLE 7** **PROJECT SCHEDULE/CONTRACT TIME/COMPLETION**

### 7.1 PROJECT SCHEDULE DETAIL

7.1.1 Prior to the issuance of the Notice to Proceed with Construction Services, DESIGN-BUILDER shall submit for review and acceptance by CITY the Project Schedule Detail. The Project Schedule Detail shall be submitted and shall be in conformance with and incorporate the milestones indicated in the Project Schedule Summaries. The Project Schedule Detail shall be in conformance with the requirements of the RFP Documents and this Contract.

7.1.2 DESIGN-BUILDER acknowledges and agrees that CITY, by accepting and approving the Project Schedule Detail as defined in Article 2, has no duty to independently verify the accuracy or completeness of the Project Schedule Detail. Further, such acceptance and approval shall not relieve DESIGN-BUILDER of its obligation to provide an accurate and complete Project Schedule Detail and to timely complete the Project.

### 7.2 CONDITIONS FOR NOTICES TO PROCEED

7.2.1. Commencement of Work and Notices to Proceed are set forth in Article 3 of this Contract.

7.2.2 Notice to Proceed with Design Services. Notice to Proceed with Design Services will be issued by CITY only after DESIGN-BUILDER has delivered to the CITY any documentation required by the City not previously provided such as bonds or insurance certificates. Notice to Proceed with Design Services shall be issued by the CITY within fifteen (15) days of receipt of such documents.

7.2.3 Notice To Proceed With Construction Services. In addition to the conditions set forth in Article 3 of this Contract, the following conditions must also be met before the CITY will issue Notice to Proceed with Construction Services.

(i) Written approval by CITY of all Design-Build Documents necessary or related to such portion of the Work, including but not limited to required Submittals and the Final Construction Documents;

(ii) Approval by CITY of DESIGN-BUILDER'S Final Schedule of Values and CPM Schedule;

(iii) Issuance of all applicable permits and receipt of all applicable approvals relating to such portion of the Work from governmental agencies having or claiming jurisdiction over the Project or Site;

(iv) Written confirmation from DESIGN-BUILDER'S insurance agents and/or companies that all insurance coverages required under this Contract are in full force and effect; and

(v) Written certification from the DESIGN-BUILDER that there are no obstacles to the Substantial Completion and Final Completion within the Contract Time.

(vi) Receipt of payment and performance bonds required by Section 13.1.7.

### 7.3 CONTRACT TIME

7.3.1 Contract Time shall commence on the date indicated in the Notice to Proceed with Design Services.

7.3.2 Failure of DESIGN-BUILDER to achieve the Final Completion Date set in the Project Schedule will result in substantial costs to CITY. DESIGN-BUILDER acknowledges and agrees that time is of the essence for completion of all of the duties and obligations of the DESIGN-BUILDER contained in the Contract.

7.3.3 DESIGN-BUILDER'S failure to complete the required Work by the Substantial Completion Milestone Dates shall entitle the CITY to deduct from the GMP "Liquidated Damages" per calendar day of delay as detailed below:

<u>Milestone and Description</u>	<u>Daily Amount of Liquidated Damages</u>
Substantial Completion by _____	\$XXXX.00
Final Completion by _____	\$XXXX.00

### 7.4 SUBSTANTIAL COMPLETION

7.4.1 NOTICE; INSPECTION; CERTIFICATION. When the DESIGN-BUILDER believes that Work is Substantially Complete, the Engineer of Record shall certify in writing to the Project Manager that Work is Substantially Complete in accordance with

this Contract and shall request the Project Manager to approve the appropriate Certificate of Substantial Completion. Thereafter, the DESIGN-BUILDER shall schedule an inspection with the Project Manager, the Professional(s), the Project Manager, the User Agency and any other personnel requested by the Project Manager. The Project Manager, assisted by other personnel as required, along with the DESIGN-BUILDER, shall make an inspection of the Project to determine the status of completion in accordance with the Final Construction Documents and this Contract. If the Project Manager does not consider the Work Substantially Complete, the Project Manager will notify the DESIGN-BUILDER in writing, giving specific reasons why the Work is not Substantially Complete. If the CITY considers the Works Substantially Complete, the appropriate Certificate of Substantial Completion shall be approved by the Project Manager and issued to the DESIGN-BUILDER. This Certificate shall fix the date of Substantial Completion and will define and identify deficiencies and Punch List items for which DESIGN-BUILDER shall be responsible.

7.4.1.1 CITY may not unreasonably refuse to perform punch list requirements to prevent DESIGN-BUILDER from reaching Final Completion. DESIGN-BUILDER agrees to maintain exclusive supervision and control over the Project and Site as necessary until the date of Substantial Completion. All warranties and guaranties shall begin to run on the date of Substantial Completion.

7.4.2 SAFE AND PROPER USE. Substantial Completion cannot occur until all conditions necessary for safe and proper use, maintenance and operations are in place.

7.5 PARTIAL UTILIZATION. Where a portion of the Project is sufficiently completed to allow use, but significant other portion(s) remain uncompleted, the Project Manager may direct the DESIGN-BUILDER to permit the CITY to take control of that portion, operate and utilize it (take Beneficial Occupancy), when the CITY believes such use will not significantly interfere with construction of the other parts of the Project. If the DESIGN-BUILDER is of the opinion that said Beneficial Occupancy is not in the CITY'S best interests, it shall give written notice of such opinion and include a statement of all reasons why certification of Beneficial Occupancy should not be issued. Otherwise, the DESIGN-BUILDER and the Engineer of Record shall certify to the CITY that all critical elements of that part of the Project are complete to the extent that the CITY may take Beneficial Occupancy, and request the Project Manager to approve a Certificate of Beneficial Occupancy for that part of the Project. Thereafter, the Project Manager, assisted by other personnel as required, along with DESIGN-BUILDER will make an inspection of that part of the Project to determine the status of completion. If the Project Manager considers that part of the Project to be ready and appropriate for Beneficial Occupancy, the Project Manager will approve and deliver to the DESIGN-BUILDER a Certificate of Beneficial Occupancy to that effect, fixing the date of Beneficial Occupancy as to that part of the Project, attaching a list of items to be completed or corrected before final payment, and fixing responsibility between the CITY and DESIGN-BUILDER for any outstanding obligations on that part of the Project. The CITY shall have the right to occupy and use the portion of the Project after date of Beneficial Occupancy for that portion, but the Project Manager will allow the DESIGN-BUILDER reasonable access to complete or correct items on the list. Acceptance of Beneficial Occupancy shall not negate the DESIGN-BUILDER'S obligation to meet milestone requirements, including Substantial

and Final Completion Dates as set forth in the herein. Where Beneficial Occupancy has been established for a portion of the project, warranties and guarantees for that portion shall commence on the date of Beneficial Occupancy unless otherwise provided for in the Contract.

## 7.6 FINAL COMPLETION

7.6.1 Notice; Inspection. When the DESIGN-BUILDER believes the Work is complete, the DESIGN-BUILDER and Engineer of Record shall certify in writing to the Project Manager that the Work is complete in accordance with this Contract and shall request the Project Manager to approve the appropriate Certificate of Final Completion. Thereafter, the DESIGN-BUILDER shall schedule a final inspection with the Engineer of Record and other Professionals, Project Manager, the Project Manager, the User Agency and any other personnel requested by the Project Manager. The Project Manager shall, after such inspection, notify the DESIGN-BUILDER in writing of any Work this inspection reveals to be Defective, or any other Work not in accordance with the Final Construction Documents and this Contract. The DESIGN-BUILDER shall immediately take such action as may be necessary to remedy such defects and bring the Project into full compliance with Final Construction Documents and this Contract and then request another inspection.

7.6.2 Final Completion of the Work shall be achieved by the DESIGN-BUILDER when all Work required under this Contract has been completed to the CITY'S satisfaction.

7.6.3 After the Project Manager has determined that all Work has been completed, the Project Manager will approve and issue the Certificate of Final Completion for the Work.

## **ARTICLE 8** **COST OF WORK AND METHOD OF PAYMENT**

8.1 COST OF WORK AND GMP. The total cost to CITY and the total compensation to DESIGN-BUILDER for the Work necessary to complete the Project, including but not limited to all costs of design, management, site development, permitting, surveying, testing, general conditions, reimbursable expenses, construction and post-construction services, fixtures and equipment, shall not exceed the GMP. An Initial GMP will be prepared by DESIGN-BUILDER when the 60% plans are completed and the final GMP at 90% plans. After negotiation and approval by both Parties, the mutually agreed upon final GMP shall be added to the Contract by amendment.

8.2 DESIGN-BUILD FEE. The Design-Build Fee is included within the GMP and is formatted under two headings "Design Professional's Fees and Costs" and "Contractor's Fees and Costs."

8.3 CONTINGENCY. The Parties have agreed to certain Contingency amounts which are included within the GMP. Use and release of these shall be as set forth within Article 9.

## 8.4 SCHEDULE OF VALUES

8.4.1 Prior to Notice to Proceed with Construction Services, the DESIGN-BUILDER shall submit a Final Schedule of Values for CITY'S review and approval. The Parties acknowledge that the Final Schedule of Values shall be based upon the GMP. The DESIGN-BUILDER shall update the Schedule of Values in form, content and detail as deemed appropriate by the CITY, during the Construction Phase. The DESIGN-BUILDER shall finalize the Schedule of Values with regard to form, content and detail, as deemed appropriate by the CITY, upon approval of Final Construction Documents, and prior to issuance of Notice to Proceed with Construction Services. The CITY reserves the right to withhold all Notices to Proceed pending its approval of the applicable Final Schedule of Values.

8.4.2 The Final Schedule of Values shall be satisfactory in form and substance to the Project Manager and include a list or description of all activities of the Work. The Final Schedule of Values shall subdivide the Work into component parts in sufficient detail to allow CITY to use as the basis for measurement of quantities in place and to calculate amounts due based on percentage of completion for payments during construction. Unsupported or unreasonable allocation of costs to one activity on the Final Schedule of Values shall be justification for rejection by CITY of such Final Schedule of Values.

8.4.3 The approved Final Schedule of Values shall accompany each Application for Payment and shall delineate the approved values, previous percentage complete approved, current percentage complete requested, and value of percentage requested.

## 8.5 APPLICATIONS FOR PAYMENT

8.5.1 Applications for Payment for Design Services shall be made upon completion of each stage in the Design Phase in accordance with the Initial Schedule of Values for Design Phase.

8.5.2 Applications for Payment for Construction Services shall be submitted on a monthly basis. The DESIGN-BUILDER shall prepare each Application for Payment and submit them to the Project Manager. The Project Manager's response to the Application for Payment shall be provided within 7 days after receipt. The Application for Payment, when submitted, shall be filled out accurately and signed by the DESIGN-BUILDER, covering Work completed as of the date of the Application and shall be supported by such data as required by the CITY. The DESIGN-BUILDER shall certify in writing that all Professionals, Subconsultants, Subcontractors and suppliers have been paid for acceptable Work and materials from previous progress payments received (less any retainage) prior to receipt of any further progress payments. The DESIGN-BUILDER shall submit an Application for Payment on the form(s) agreed upon with Project Manager and which will include the aforementioned certification. If payment is requested on the basis of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by such supporting data as will establish the CITY'S title to the material and equipment and protect its interest therein, including applicable insurance.

8.5.3 All Applications for Payment by DESIGN-BUILDER during the Construction Phase shall be accompanied by DESIGN-BUILDER'S certification as to the percentage

of completion of the Work-in-place on a trade-by-trade or subcontract-by-subcontract basis, and by written evidence satisfactory to CITY that the Professionals, Subconsultants, and Subcontractors performing or providing any portion of the Work during the immediately preceding payment period have been paid in full.

8.5.4 Each Application for Payment shall contain a sufficiently detailed work description and breakdown of charges for the preceding 30 day period or other agreed upon milestone. Such Application shall be prepared using an agreed upon format such as a standard industry payment application form. Supporting documentation must be included to the extent required under Florida Statutes, any implementing rules, or other requirements of CITY.

## 8.6 PAYMENT FOR WORK PERFORMED

8.6.1 Payment for Construction Work. Following commencement of construction of the Project, CITY shall pay DESIGN-BUILDER on a percentage of construction completion based on Work in place performed by DESIGN-BUILDER.

## 8.7 RETAINAGE

8.7.1 All Construction Phase progress payments shall be subject to a 10% retainage to be withheld by CITY. CITY shall not be obligated to pay DESIGN-BUILDER interest on any retainage held by CITY. When 50% of the Work during the Construction Phase is complete and in place (not including stored materials), the DESIGN-BUILDER may submit a written request to the Project Manager that retainage being withheld for such Work in place be reduced to 5%. The CITY has no obligation to reduce the retainage but may do so, provided however, that the Work has proceeded to the satisfaction of the CITY.

8.7.2 The DESIGN-BUILDER agrees that if the CITY does not withhold retainage from a payment to the DESIGN-BUILDER, the DESIGN-BUILDER shall not withhold retainage from the Subcontractors who are due funds out of that payment. Retainage released by CITY shall be released by DESIGN-BUILDER *pro rata* to Subcontractors.

## 8.8 APPROVAL AND TIME OF PAYMENTS

8.8.1 All Applications for Payment including Final Payment are subject to the review and approval of the CITY, and in the event of any dispute between the CITY and DESIGN-BUILDER as to the percentage of completion indicated therein, the Project Manager shall issue his or her opinion as to such percentage of completion, which opinion shall be the basis upon which payment shall be made.

8.8.2 CITY shall make payments in accordance with Sections 218.70 through 218.80, Florida Statutes, The Local Government Prompt Payment Act.

8.8.3 The Project Manager may refuse to approve the whole or any part of any payment if, in the Project Manager's opinion, he/she is unable to make the representation that the Application is acceptable to the CITY. The Project Manager may also refuse to approve any such Application, or nullify any such payment previously approved, to such extent as may be necessary in the Project Manager's opinion to protect the CITY because of the following:

- (i) Subsequently discovered evidence or the results of subsequent inspections or tests, indicating Defective Work;
- (ii) The Work or any portion thereof is Defective;
- (iii) The CPM schedule, and regular updates to the Project Schedule, as required in this Contract, have not been submitted or accepted;
- (iv) Lien or other claims have been filed against the CITY for which the DESIGN-BUILDER may be liable;
- (v) The CITY has been required to correct Defective Work or complete the Work and has not completed the correction Work;
- (vi) The Work, or a portion thereof, was executed unsatisfactorily, or DESIGN-BUILDER failed to clean up as required by this Contract, or failed to control traffic or dust, or was otherwise, not in compliance with this Contract; or
- (vii) There is any uncured Default under this Contract.

8.9 PREREQUISITES TO PROGRESS PAYMENTS. Payment with respect to each and every Application for Payment shall be contingent upon the occurrence of the following conditions precedent, and such other conditions precedent as CITY may require pursuant to the terms of this Contract:

- (i) Application for Payment in form and content satisfactory to CITY pursuant to this Article 8;
- (ii) Written certification by the DESIGN-BUILDER pertaining to the Work covered by the respective Application for Payment stating that the portion of the Work then completed has been constructed in a good and Workmanlike manner and in strict compliance with the Final Construction Documents and all applicable laws, ordinances and building codes;
- (iii) There are no claims outstanding against, for or in connection with any portion of the Work, the Project or Site, or any portion thereof;
- (iv) All governmental permits, approvals, consents, licenses, inspections and other authorizations required in connection with the construction of that portion of the Work for which such Application for Payment is being made, have been obtained and are in full force and effect;
- (v) All funds previously disbursed by CITY have been disbursed by DESIGN-BUILDER in accordance with the Schedules of Values and the GMP, as the case may be;
- (vi) All funds previously disbursed by CITY to DESIGN-BUILDER have been paid by DESIGN-BUILDER to DESIGN-BUILDER'S Subconsultants, Professionals, and Subcontractors, and have not been withheld for any purpose; and
- (vii) DESIGN-BUILDER has certified to CITY that all outstanding claims for Work, including labor, services, materials and equipment furnished by any of its Subconsultants, Professionals, and Subcontractors have been paid

up to and through the date of the immediately preceding Application for Payment.

8.10 APPLICATION FOR FINAL PAYMENT. After the Certificate of Final Completion for the Work has been approved and issued by the Project Manager, and the final Change Order, if any, has been approved by the CITY, the DESIGN-BUILDER may make Application for Final Payment following the procedure for Work-in-progress payments. The Application for Final Payment shall be accompanied by the, Certificate of Final Completion, Certificate of Occupancy and the Consent of Surety to Final Payment, all submitted on forms to be provided by the CITY, and such other documents as CITY may reasonably require. Where Certificates of Beneficial Occupancy have been issued for portions of the Project in accordance with this Contract, they shall be maintained in the project file.

8.11 DOCUMENTATION REQUIRED FOR FINAL PAYMENT. In addition to the documentation required above, the following items and documentation shall be submitted by DESIGN-BUILDER, subject to approval of the CITY, in order for DESIGN-BUILDER to receive payment under DESIGN-BUILDER'S Final Application for Payment:

8.11.1 CERTIFICATE OF COMPLIANCE AND STATEMENT OF GUARANTEE. A written statement(s) from the appropriate Professional(s), addressed to the CITY certifying and warranting that:

- (i) to the best of the Professional(s) knowledge and belief, the Project complies with all applicable governmental laws, codes, ordinances, decrees and regulations, including, but not limited to, all permit requirements, and regulations,
- (ii) to the best of the Professional(s) knowledge and belief, the Project has been completed in a good and workmanlike manner in accordance with the Final Construction Documents.

8.11.2 CONSENT OF SURETY. A letter of consent, or a written waiver of such consent from the surety(s), , consenting to such Final Payment, provided that in so consenting, or in so waiving its consent, such surety(s) shall not be relieved of any obligations under such payment and performance bond(s).

8.11.3 PROJECT RECORD DOCUMENTS. As described in the City of Daytona Beach Utilities Department Standard Details, latest edition.

8.11.4 Reserved.

8.11.5 DELIVERY OF PERMITS. Originals, if available, or true copies of all licenses, permits and approvals required by all governmental agencies having or claiming jurisdiction over the Project for the full and uninterrupted use, occupancy and operation of the Project.

8.11.6 ALL OTHER DOCUMENTS REQUIRED BY THIS CONTRACT.

8.12 STORED MATERIALS. No payment or compensation for materials purchased by DESIGN-BUILDER but not yet installed or incorporated into the Project shall be made without the CITY'S prior written approval of the conditions under which such materials are purchased and stored. The CITY'S prior written approval shall be

provided in a timely manner and not unreasonably withheld. In no event shall any such payment or compensation be made unless the materials involved have been delivered to the Site or stored with a bonded warehouseman, clearly labeled and identified, with satisfactory written evidence of security, insurance and suitable storage. DESIGN-BUILDER shall provide the CITY, in connection with such materials, a copy of a bill of sale or other evidence of title in DESIGN-BUILDER, together with a copy of Uniform Commercial Code (UCC) searches against DESIGN-BUILDER and the warehouseman, if applicable, indicating the existence of no liens or claims which may affect such materials.

8.13 CLEAR TITLE. At such time as DESIGN-BUILDER receives payment with respect to any and all Work, including materials and equipment, covered by an Application for Payment, whether incorporated in the Project or not, title thereto shall pass to CITY free and clear of all claims, security interests and encumbrances, and CITY shall not be required to pay for any Work, including materials or equipment, which is subject to a Contract under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by or upon DESIGN-BUILDER or any other person. Any liens filed against any portion of the Work, Project or Site shall be promptly removed, discharged and/or transferred by DESIGN-BUILDER to other security as a strict condition precedent to any subsequent progress payments or, if applicable, the Final Payment.

8.14 COST OF CLAIMS. If at any time there shall be evidence of any claim for which, if established, the CITY might become liable, and which is chargeable to DESIGN-BUILDER, or if DESIGN-BUILDER shall incur any liability to the CITY, or the CITY shall have any claim or demand against DESIGN-BUILDER, whether or not reduced to judgment or award, of any kind or for any reason, related to or arising out of this Contract, the CITY shall have the right to retain out of any payment due, or which may become due under this Contract, an amount sufficient to indemnify the CITY against that portion of the claim as is allocatable to the DESIGN-BUILDER, and to compensate the CITY for and fully satisfy such liability, claim or demand. Should any such claim develop after final payment has been made, the DESIGN-BUILDER shall refund to the CITY all monies that the latter may be compelled to pay in discharging such claims or incurred in collecting said monies from the DESIGN-BUILDER. This paragraph only refers to claims or such portion of claims as are chargeable and are allocable to the DESIGN-BUILDER, and/or its officers, agents, servants, employees, volunteers, Subconsultants and Subcontractors.

8.15 DESIGN-BUILDER'S CONTINUING OBLIGATION. The DESIGN-BUILDER'S obligation to perform the Work and complete the Project in accordance with this Contract shall be absolute. Neither approval of any Work-in-progress or the Final Payment, the issuance of a Certificate of Substantial Completion or a Certificate of Final Completion, any payment by CITY to DESIGN-BUILDER, any use of the Project or any part thereof by the CITY, the issuance of a Certificate of Final Completion, any act of acceptance by CITY, any failure to do so, nor any correction of Defective Work by CITY shall constitute an acceptance of Work not in accordance with this Contract or relieve DESIGN BUILDER in any way of its obligations under this Contract.

8.16 WAIVER OF CLAIMS. The making and acceptance of Final Payment shall constitute a waiver of any and all claims by the DESIGN-BUILDER against the CITY, except for those previously submitted in writing in accordance with the Contract.

8.17 The CITY reserves the right to issue CITY Purchase Orders directly to suppliers of materials to be incorporated into the Work of Project as described in the Contract, in order to obtain the exemption from sales taxes available under Fla. Stat. § 212.08(6), in accordance with the procedures listed below. For purposes of this Policy, the term, "materials," means all items of tangible personal property which CITY may be eligible to directly purchase tax free in accordance with Fla. Stat. § 212.08(6), and implementing administrative regulations; and all other terms will have the meaning provided or suggested in the Contract, where applicable.

8.17.1 The CONTRACTOR will provide to the CITY a list of all materials to be used in the Work, including those items of material required to be used by the Architect/Engineer, and will denote on that list any items that the CONTRACTOR deems suitable for CITY to purchase directly. CONTRACTOR will also denote those items that are to CONTRACTOR's knowledge likely to have long lead times or that are available from only one or a severely limited number of suppliers.

8.17.2 The CITY may accept or reject the CONTRACTOR's recommendations and will in CITY's discretion directly purchase those items that CITY deems suitable for direct purchase. The CITY's election to make direct purchases under this Policy will not eliminate or affect the CONTRACTOR's responsibilities under the Contract except as specifically noted herein. Among other things, CONTRACTOR will remain responsible for controlling the means and methods by which the Work is to proceed; working diligently to complete the Work in accordance with applicable deadlines; and for tracking ordering and delivery of materials so as to maintain the critical path. Neither the procedures herein, nor the CITY's election to directly purchase certain materials, will alter or the applicability of the procedures and standards to be used under the Contract for claims for delay or change orders.

8.17.3 The CONTRACTOR will require that all quotes for materials received by CONTRACTOR for tangible personal property to be incorporated into the Project: (i) itemize sales tax as a separate item; (ii) include language that the quotations are assignable to the CITY; and (iii) include language stating that if assigned to CITY, no sales tax will be charged upon provision of CITY's sales tax exemption certificate. Nothing herein will prohibit the CITY from requiring the supplier of materials to be directly purchased by CITY, from requiring the supplier to issue a written quotation directly to CITY, even where CONTRACTOR has provided CITY with an assignable quotation as provided herein.

8.17.4 CITY will provide CONTRACTOR a list of items of tangible personal property to be purchased directly by CITY. CONTRACTOR will remain responsible for directly purchasing all items of such property that CITY does not elect to purchase directly.

8.17.5 For those items of tangible personal property that CITY elects to directly purchase, CONTRACTOR will prepare City form Purchase Order Requests, consistent with the quotes provided by the suppliers and this Policy.

8.17.6 CONTRACTOR will forward the completed Purchase Order Request to the City's Purchasing Agent, and provide a copy to the Project Manager.

8.17.7 The CITY will issue a Purchase Order to the supplier based on the information provided by the CONTRACTOR and the supplier's written quotation. The City will provide a copy of the Purchase Order to the CONTRACTOR.

8.17.8 Upon receipt of the CITY's Purchase Order, CONTRACTOR will issue a deductive contract adjustment to the Subcontractor or supplier that will account for the value of the material and the sales tax as it pertains to that Subcontractor's or supplier's contract with the CONTRACTOR. All sales tax savings shall be credited to the CITY through a deductive change order under the CITY's Contract with CONTRACTOR.

8.17.9 CITY will acquire title to and assume responsibility for materials directly purchased by CITY under this Policy, upon delivery to the job site.

8.17.10 Suppliers shall directly invoice the CITY. Invoices will be forwarded to the CONTRACTOR for verification. Immediately as materials directly purchased by CITY are delivered to the Project site, the CONTRACTOR will review the condition of the materials delivered for conformity with Contract specifications and the supplier's invoice for conformity with this Policy, including confirmation that the invoice references CITY's Purchase Order and is billed to CITY, not CONTRACTOR or Subcontractor. CONTRACTOR will promptly advise the CITY of any deficiencies in the materials or invoice. The intent of this requirement is to require CONTRACTOR to act diligently to allow CITY to meet its obligations to the supplier under Florida's Prompt Payment Act, Fla. Stat. § 218.70 et seq. Nothing herein will prohibit the CONTRACTOR from requiring a Subcontractor of CONTRACTOR's conduct a similar review for CONTRACTOR's benefit; however, CONTRACTOR will remain responsible to CITY for promptly reviewing the materials and invoice in accordance with this Section.

8.17.11 Upon being satisfied that directly purchased materials and the accompanying invoice from the supplier are satisfactory, CITY will pay the supplier for the items purchased. Under no circumstances will CONTRACTOR be responsible for paying the supplier. The CITY will issue a check for the approved invoice amount and mail this check directly to the supplier, accompanied by the Certificate of Entitlement. A copy of the check will be forwarded to the CONTRACTOR so that CONTRACTOR can accurately track and summarize all CITY Direct Purchase payments.

In the event the CITY does not timely execute the appropriate documents submitted by the CONTRACTOR for direct purchase, the CONTRACTOR may, upon timely notice to the CITY, order such materials irrespective of loss of sales tax savings. It is the intent of these provisions to implement the cost savings afforded by the sales tax exemption without delay of the Work and that the CONTRACTOR retain complete control of the Progress Schedule. While the CITY'S direct purchase of materials or supplies shall not relieve the CONTRACTOR of responsibility to maintain and safeguard such materials and supplies until they are incorporated into the Work and accepted by the CITY, the CITY shall assume liability for the materials at the time they are delivered to the jobsite. The CONTRACTOR shall not be entitled to a time extension in the event that delay is occasioned by the CITY'S direct purchase of materials.

8.17.12 The CITY will bear the economic burden of obtaining insurance covering damage or loss or will directly enjoy the economic benefit of the proceeds of any such insurance. Nothing herein will prohibit the CITY from requiring CONTRACTOR to supply additional coverage, such as through a builder's risk policy or installation floater, to insure materials directly purchased by CITY from damage and risk of loss.

8.17.13 The CITY does hereby defend, hold harmless, and indemnify the CONTRACTOR from any and all liability for unpaid sales taxes which the CONTRACTOR may suffer as a result of claims, demands, costs, interest, penalties or judgments against the CONTRACTOR made by or in favor of the State of Florida on account of failure to pay Florida State Sales Taxes on materials purchased by the CITY under this Policy. The CITY agrees to defend against any such claims or actions brought against the CONTRACTOR whether rightfully or wrongfully brought or filed. The CONTRACTOR agrees that it will promptly notify the CITY of any such claim, demand, or action. Furthermore, the CONTRACTOR expressly agrees that, if and when requested by the CITY, it will enter into such amendments to this Contract as the CITY, upon consultation with its legal counsel, may deem necessary or useful to preserve or ensure its right under Florida law to the sales tax exemption contemplated by this subsection. CITY's obligation to indemnify and hold harmless CONTRACTOR as provided herein is subject to limitations, including monetary limitations, contained in Florida Statutes Section 768.28.

8.17.14 For administrative services as described above, the Contractor will be paid a fee equal to 1.5% of the Owner Direct Purchase Order for each Purchase Order issued for Owner Direct Purchase of materials.

## **ARTICLE 9** **CONTINGENCY**

9.1 CONTINGENCY IS INCLUDED WITHIN THE GMP

9.1.1 Because of the size, complexity and nature of the Project, a contingency will be established. It is understood that the contingency is included in the GMP. The amount of the contingency will be indicated in the Amendment establishing the GMP. All work by the DESIGN-BUILDER related to the contingency shall be performed in accordance with the terms and provisions of this Contract and with the prior approval of the CITY. Prior to final payment, GMP shall be adjusted, as required, and an appropriate Change Order issued to reflect actual authorized expenditures made against the contingency and provide credit to the CITY. The DESIGN-BUILDER agrees that the DESIGN-BUILDER shall receive payment only for the amount of Work actually authorized by the CITY and performed by the DESIGN-BUILDER.

## **ARTICLE 10** **CHANGES TO THE WORK**

10.1 CHANGES TO THE WORK

10.1.1 Without invalidating the Contract, the CITY may at any time or from time to time order additions, deletions, or revisions in the Work. Should the CITY request DESIGN-BUILDER to provide and perform changes to the Work for this Project, DESIGN-BUILDER agrees to provide and perform such changes to the Work in accordance with the covenants, terms, and provisions set forth herein and as a continuation of the Work

covered under this Contract. Changes to the Work shall consist of additions, revisions or deletions to the Work after the Final Construction Documents have been approved by the CITY.

## 10.2 CHANGE ORDER PROCEDURE FOR CHANGES TO THE WORK

10.2.1 In the event CITY desires to make changes to the Work after establishment of Final Construction Documents, the Project Manager shall provide DESIGN-BUILDER with a proposal request, identifying the Work to be added, deleted or revised. Upon receipt of a proposal request from CITY, the DESIGN-BUILDER shall promptly submit a written Change of Work Proposal for the changed Work priced in accordance with this Article 10. The DESIGN-BUILDER shall submit a proposed credit for Work to be deleted, which is priced consistent with the Final Schedule of Values. In the event DESIGN-BUILDER proposes changes to the Work after establishment of Final Construction Documents, DESIGN-BUILDER shall provide CITY with a Change of Work Proposal priced in accordance with this Article 10. If the proposal request calls only for the deletion of Work, the Project Manager may order the partial suspension of any Work related to the proposed deletion, in which case the DESIGN-BUILDER must cease performance as directed; the DESIGN-BUILDER may be entitled to additional compensation or an increase in Contract Time to complete the Contract as a result of the suspension. The DESIGN-BUILDER shall not be entitled to claim lost profits on deleted Work. Changed Work shall be performed in accordance with all applicable conditions of the Contract.

10.2.2 Additional Work performed by the DESIGN-BUILDER without authorization of a Change Order will not entitle the DESIGN-BUILDER to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in Article 4. The effect of this paragraph shall remain paramount and shall prevail irrespective of any conflicting provisions contained in this Contract.

10.2.3 Upon Contract, when and if there are changes in the Work to be performed and any mutually agreed upon claim of the DESIGN-BUILDER for a change in the Contract time or the GMP, the Project Manager will prepare a written Change Order to be signed by the DESIGN-BUILDER and processed in accordance with CITY'S Purchasing Code.

10.2.4 It is the DESIGN-BUILDER'S responsibility to notify its Surety of any changes affecting the general scope of the Work, GMP, or Contract Time.

10.2.5 In the absence of agreement as to changes in the Work, the CITY may, at its sole discretion, issue a unilateral Change Order to the DESIGN-BUILDER. Pricing of the unilateral Change Order will be in accordance with this Article 10. The Change Order will specify a price, and if applicable, a time extension, determined to be reasonable by the CITY. If DESIGN-BUILDER fails to sign such Change Order, the DESIGN-BUILDER may submit a claim in accordance with this Article 10, but the DESIGN-BUILDER shall nevertheless be obligated to fully perform the Work as directed by the Change Order.

## 10.3 CLAIMS BY THE DESIGN-BUILDER

10.3.1 Should the DESIGN-BUILDER make a claim for an increase in Contract Time or an increase in GMP, the claim shall be accompanied by an affidavit stating that:

- (i) The claim is made in good faith;

- (ii) The supporting data are accurate and complete to the best of the DESIGN-BUILDER'S knowledge and belief; and
- (iii) The amount requested accurately reflects the GMP adjustment for which the DESIGN-BUILDER believes the CITY is liable.

Absent such affidavit, the claim will not be considered. Should any dispute arise, submission of the affidavit shall be a condition precedent to filing a lawsuit.

10.3.2 Any claim by the DESIGN-BUILDER for an increase in the Contract Time or an increase in the GMP shall be calculated and priced in accordance with this Article 10, shall be in writing, and shall be delivered to the Project Manager within 10 days of the occurrence prompting the request for the increase first happening. Written supporting data shall be submitted to the Project Manager within 20 days after such occurrence unless the Project Manager allows additional time.

10.3.3 The DESIGN-BUILDER shall proceed diligently with performance of the Work as directed by the CITY, regardless of pending claim actions or disputes.

10.4 CHANGE OF GMP. The GMP is as defined in Article 2. All duties, responsibilities, and obligations assigned to or undertaken by the DESIGN-BUILDER shall be at its sole expense without change in the Contract Price. The GMP may only be increased or decreased by a written Change Order.

#### 10.5 PRICING OF CHANGES TO THE WORK

10.5.1 The price for changes to the Work shall be determined on the basis of reasonable expenditures and savings of those performing the Work directly attributable to the change and shall be no higher than that prevailing in the area of the Project. The price for changes to the Work shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including Social Security, unemployment insurance and fringe benefits required by custom; workers' or workmen's' compensation insurance; rental value of equipment and machinery at actual rented rate or EquipmentWatch rates whichever is less (not to exceed the original cost of the equipment or machinery); cost of additional field personnel directly attributable to the change (cost of personnel already overseeing the project shall not be included unless the duration of the project is increased as a result of the change); and fees paid to architects, engineers and other professionals and consultants relating directly to the change.

10.5.2 Additional fees paid to architects, engineers and other professionals and/or consultants shall be calculated at the hourly rate of actual wages paid to such personnel times a not-to-exceed multiplier of 2.5. It shall be applied to actual hours actually, reasonably and necessarily expended by DESIGN-BUILDER'S professional and technical personnel.

10.5.3 The price for Changes to the Work shall not include any of the following:

10.5.3.1 Payroll costs and other compensation of the DESIGN-BUILDER'S officers, executives, principals (of partnership and sole proprietorships), general managers, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the DESIGN-BUILDER, whether at the Site or in its principal or a branch office for general

administration of the Change Order Work, all of which are to be considered administrative costs covered by the DESIGN-BUILDER'S overhead and profit;

10.5.3.2 Extraordinary fringe benefits not required by custom;

10.5.3.3 Expenses of DESIGN-BUILDER'S principal and branch offices including the DESIGN-BUILDER'S office at the Site (except for excess costs of office at Site when required because of CITY'S changes in the Work);

10.5.3.4 Any part of the DESIGN-BUILDER'S capital expenses, including interest on the DESIGN-BUILDER'S capital used for the Change Order Work and charges against the DESIGN-BUILDER for delinquent payments;

10.5.3.5 Cost of premiums for all bonds and insurance (except for costs of additional bonds and insurance required because of changes in the Work);

10.5.3.6 Costs due to the negligence of the DESIGN-BUILDER, any Subcontractor or Subconsultant, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property; and

10.5.3.7 Overhead or general expense costs of any kind (other than as provided in Article 10.5.4).

10.5.4 Overhead and Profit. The maximum percentage allowed for the DESIGN-BUILDER'S combined overhead and profit (markup) shall be as follows:

10.5.4.1 Overhead and profit shall be applied to costs related to actual construction Work only. No markup shall be allowed on changes due to direct purchases by the CITY for sales tax savings. Design Work shall not be subject to DESIGN-BUILDER'S mark up.

10.5.4.2 For all Change Order Work done or to be done by the DESIGN-BUILDER'S own organization, a fixed percentage of the total adjustment to the GMP shall be negotiated with the Project Manager at the Preconstruction Meeting and shall not exceed ten percent.

10.5.4.3 For all Change Order Work done or to be done by Subcontractors, each Subcontractor may add up to 5% to its allowable cost of work for combined overhead and profit and the DESIGN-BUILDER may add up to 5% to the Subcontractor's allowable cost of work for its combined overhead and profit; provided, however, that the total maximum markup allowed, including but not limited to DESIGN-BUILDER, Subcontractors, and all lower-tier Subcontractors, shall in no event exceed 150% of allowable costs.

10.5.5 Material and equipment expenses shall be based on those actually, reasonably and necessarily expended for the changes to the Work and shall be tied to the prices reflected in the Final Schedule of Values.

10.5.6 For all changes, the DESIGN-BUILDER shall submit an itemized cost breakdown, together with supporting data in such detail and form as required by the CITY. When a credit is due, the amount of credit to be allowed by the DESIGN-BUILDER to the CITY for any such change which results in a net decrease in cost will be the amount of the actual net decrease in direct cost as determined by the CITY, plus the applicable

reduction in overhead and profit. When both additions and credits are involved in any change, the combined overhead and profit shall be calculated on the basis of the net change, whether an increase or decrease. In any event, the minimum detail shall be an itemization of all man-hours required by discipline/trade with the unit cost per man-hour and total labor price, labor burden, equipment hours and rate for each piece of equipment, material by units of measure and price per unit, other costs specifically itemized, plus the overhead and profit markup.

10.5.7 If the parties are unable to agree on a price for the changed Work, a reasonable price for the same shall be established by the CITY in accordance with this Article 10. The CITY shall then process a unilateral Change Order, specifying the said reasonable price, in accordance with Article 10. The DESIGN-BUILDER shall perform the Work as directed in the Change Order but may submit a claim in accordance with this Article 10.

#### 10.6 CHANGE OF CONTRACT TIME

10.6.1 The Contract Time may only be changed by a Change Order. Any request for an extension in the Contract Time shall be made in writing and delivered to the Project Manager within ten (10) days of the occurrence first happening and resulting in the claim. Written supporting data will be submitted to the Project Manager within twenty (20) days after such occurrence unless the Project Manager allows additional time. All claims submitted by the DESIGN-BUILDER for adjustments to the Contract Time must set forth in detail the reasons for and causes of the delay; clearly demonstrate that the delay will impact the Critical Path; and indicate why the subject delay was beyond the DESIGN-BUILDER'S control or fault.

10.6.2 If the DESIGN-BUILDER is delayed at any time in the performance, progress, commencement, or completion of the Work by any act or neglect of the CITY or by any of its employees, or by any separate entity employed by the CITY, or by changes ordered in the Work, or by Acts of God, fire, utility conflicts which could not have been identified or foreseen by the DESIGN-BUILDER using reasonable diligence, or other causes beyond the DESIGN-BUILDER'S reasonable control, then the Contract Time shall be extended by Change Order for such reasonable time as the CITY may determine. DESIGN-BUILDER shall be entitled to an extension of time for such causes only for the number of days of delay which the DESIGN BUILDER demonstrates to be due to such causes and only to the extent such occurrences actually impact the critical path and consequently delay the completion of the Project.

Provided, however, notwithstanding anything in the Contract to the contrary, no interruption, interference, inefficiency, suspension or delay in the performance, progress, commencement or completion of the Work for any cause whatsoever, including those for which the CITY may be responsible in whole or in part, shall relieve DESIGN-BUILDER of its duty to perform the Work under the Contract, or give rise to any right to damages from the CITY. DESIGN-BUILDER shall be entitled to an extension of time and/or reasonable additional compensation as agreed upon by the DESIGN-BUILDER and the CITY related to any delay caused by other contractors not under the authority and control of the DESIGN-BUILDER or any delay caused by the CITY.

The above paragraph shall expressly apply to claims based on early completion, as well

as claims based upon late completion. The DESIGN-BUILDER shall not have the right to damages or additional compensation on the basis that delays, not caused by CITY, for any cause whatsoever prevented early completion.

10.7 LIQUIDATED DAMAGES. If DESIGN-BUILDER fails to achieve Substantial Completion set forth in the Project Schedule, Liquidated Damages shall be assessed in the amounts stated in Article 7. Upon Project Manager's notification to DESIGN-BUILDER that DESIGN-BUILDER failed to meet the Substantial Completion Date, the CITY may deduct the liquidated damages in the amounts stated in the Contract either by deductive Change Order or from any monies due the DESIGN-BUILDER, in addition to any retainage being withheld. Failure of the Project Manager to notify the DESIGN-BUILDER and to deduct the liquidated damages from a progress payment shall not be construed as a waiver of liquidated damages assessment.

10.8 If DESIGN-BUILDER fully performs its due diligence investigation with respect to concealed conditions (below ground or within existing construction) prior to the commencement of Work, and conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the due diligence investigation or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the due diligence investigation, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The CITY shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the DESIGN-BUILDER's cost of, or time required for, performance of any part of the Work, shall negotiate with the DESIGN-BUILDER an equitable adjustment in the GMP or Contract Time, or both. If the CITY determines that the conditions at the site are not materially different from those indicated in the documents, reports or other like materials provided by CITY and that no change in the terms of the Design-Build Contract is justified, the CITY shall so notify the DESIGN-BUILDER in writing, stating the reasons. Claims by the DESIGN-BUILDER in opposition to such determination must be made within 21 days after the CITY has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the CITY and DESIGN-BUILDER cannot agree on an adjustment in the GMP or Contract Time, the adjustment shall proceed pursuant to Article 10.5 of this Contract.

## **ARTICLE 11** **WARRANTIES, GUARANTEES AND REPRESENTATIONS**

11.1 REPRESENTATIONS AND WARRANTIES. DESIGN-BUILDER represents and warrants to the CITY the following, which representations and warranties are a material inducement for CITY entering into and executing this Contract:

11.1.1 CORPORATE OR JOINT VENTURE STATUS. DESIGN-BUILDER warrants and represents to the CITY that it is and shall remain throughout the term of this Contract the same entity that submitted the Proposal in response to the RFP, and that

this same entity will remain active and current throughout the period this Contract is in effect, which includes post-construction and warranty periods.

11.1.2 LICENSES. DESIGN-BUILDER agrees and covenants to maintain itself as the legal entity obligated under this Contract to perform and provide the services hereunder, and in good standing throughout the period this Contract is in effect, which includes post-construction and warranty periods. It further agrees to obtain and maintain in good standing throughout the period this Contract is in effect, all such licenses as are required to do business in the State of Florida, the CITY, and any other applicable jurisdiction, including, but not limited to, licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional engineering, architectural, surveying and construction services to be provided and performed by DESIGN-BUILDER pursuant to this Contract.

11.1.3 QUALITY OF MATERIALS AND WORK. DESIGN-BUILDER represents and warrants to the CITY that all supplies, materials and equipment incorporated in the Project shall be new, of the highest quality, free from faults and defects, and in strict conformance with the Final Construction Documents. The DESIGN-BUILDER warrants and guarantees to the CITY that all Work will be of good quality, performed in a workmanlike manner, free from faults or defects, and in accordance with the requirements of the Contract and any inspections, tests, or approvals referred to in this Article. All unsatisfactory Work, all faulty Work and all Work not conforming to the requirements of the Contract or such inspections, tests, approvals, or applicable building, construction and safety requirements, shall be considered Defective. Notice of all defects shall be given to the DESIGN-BUILDER by the Project Manager. Work not conforming to these requirements shall be corrected in accordance with Article 4 and Article 14.

11.1.4 STANDARDS OF WORK. DESIGN-BUILDER represents and covenants that all the Work to be provided and/or performed by DESIGN-BUILDER and the Professionals, Subconsultants, and/or Subcontractors engaged by DESIGN-BUILDER shall be performed in accordance with the highest standards of ethical and professional practice and in accordance with all applicable laws, rules, regulations, ordinances, codes, decrees, policies, standards or other guidelines issued by those governmental agencies which have or may claim jurisdiction over all or any portion of the Project.

11.1.5 MAINTAIN PREMISES. DESIGN-BUILDER shall, during the term of this Contract, keep the Site free from accumulation of waste materials or rubbish caused by DESIGN-BUILDER'S operations and shall maintain the Site in accordance with all applicable laws, codes, rules, regulations and ordinances of all governmental agencies having or claiming to have jurisdiction over the Site. DESIGN-BUILDER shall control dust, wind-blown rubbish or construction materials (with tarps, water or other approved materials) at all times and shall respond promptly to any complaints, and shall take necessary measures to abate any problems with dust or wind-blown rubbish. Further, at the completion of the Project, DESIGN-BUILDER shall promptly remove from and about the Site all of DESIGN-BUILDER'S tools, construction equipment, machinery, surplus materials, waste materials and rubbish and temporary fencing and barricades.

11.1.6 APPROVED FINAL CONSTRUCTION DOCUMENTS. The Final Construction Documents shall be approved and, where required, permitted by all

governmental agencies or authorities having or claiming jurisdiction over the Project and any other whose approval, in whole or in part, may be required.

11.1.7 BUILDING PERMITS AND OTHER REQUIRED CONSTRUCTION PERMITS. All building permits and other required permits and approvals shall be issued and received on or prior to issuance of Notice to Proceed with Construction Services.

11.1.8 COMPLIANCE WITH LAWS. DESIGN-BUILDER shall not violate any court order or any law, regulation, ordinance, rule, order, decree, code or requirement of any governmental authority having or claiming jurisdiction over the Project.

11.1.9 UTILIZATION OF MATERIALS AND EQUIPMENT. All labor and materials to be paid for by CITY hereunder shall be employed or used solely for the design and construction of the Project.

11.1.10 NO CONFLICT OF INTEREST. DESIGN-BUILDER represents that it has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the Work required hereunder. DESIGN-BUILDER further represents that no person having any such interest shall be knowingly employed or engaged by DESIGN-BUILDER for said performance. DESIGN-BUILDER covenants that it shall obtain this same representation from its Subconsultants, Professionals, and Subcontractors.

11.1.11 NO SOLICITATION OR CONTINGENCY FEES. DESIGN-BUILDER represents that it has not employed or retained any company or person other than *bona fide* employees working solely for DESIGN-BUILDER for the purpose of soliciting or securing this Contract, and that DESIGN-BUILDER has not paid or agreed to pay any person, company, firm or entity other than *bona fide* employees working solely for DESIGN-BUILDER any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. DESIGN-BUILDER covenants that it shall obtain these same representations from its Subconsultants, Professionals, and Subcontractors.

11.1.12 NO CHANGE OR SUBSTITUTION OF SUBCONSULTANTS, PROFESSIONAL AND/OR SUBCONTRACTORS. DESIGN-BUILDER warrants and represents that it shall not change or substitute the Subconsultants, Professionals and/or Subcontractors identified in DESIGN-BUILDER'S Proposal in response to the RFP without prior written approval of the CITY. Such CITY approval will not be unreasonably withheld.

11.1.13 DRUG-FREE. DESIGN-BUILDER shall use reasonable efforts, throughout the term of this Contract, to prohibit the use and possession of any alcoholic or other intoxicating beverages, illegal drugs, or controlled substances while on the job or on the City's property by all agents and employees of DESIGN-BUILDER and its Subconsultants, Professionals, and Subcontractors.

11.1.14 GENERAL WARRANTY. DESIGN-BUILDER shall warrant the entire Work, and all labor, materials, services and equipment incorporated therein, for an initial minimum period of one year from the date of Substantial Completion or for such longer period(s) as may be reasonable or fair under the circumstances as agreed upon between CITY and DESIGN-BUILDER or as may be otherwise provided in this Contract. However,

this provision shall not terminate DESIGN-BUILDER'S liability which shall terminate under an applicable statute of limitations, or establish a period of limitations with respect to the Work nor limit or abrogate any other rights or remedies of the CITY under this Contract or applicable law. DESIGN-BUILDER warrants that all materials and equipment will be of good quality and new unless otherwise required or permitted by express written agreement between CITY and DESIGN-BUILDER. DESIGN-BUILDER further warrants that the Work will be free from defects not inherent in the quality required or permitted. DESIGN-BUILDER additionally warrants that Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. DESIGN-BUILDER'S warranty excludes remedy for damage or defect caused by abuse, modifications not executed by DESIGN-BUILDER, improper or insufficient maintenance, or improper operation. If requested by CITY, DESIGN-BUILDER shall furnish satisfactory evidence as to the kind and quality of materials and equipment provided.

11.1.15 EXTENDED WARRANTIES. Extended warranties applicable to certain specified portions of the Project are stated herein. Specific and more detailed language will be supplied by DESIGN-BUILDER along with the detailed and itemized project specifications under development. Such warranties will be drafted under the guidance of CITY to clarify any ambiguities in the extended warranties, prior to Substantial Completion. DESIGN-BUILDER agrees, on behalf of itself and its Professionals, Subconsultants, and Subcontractors, to timely honor all such extended warranties. This provision shall not terminate DESIGN-BUILDER'S liability which shall terminate under an applicable statute of limitations, or establish a period of limitations with respect to the Work, nor limit or abrogate any other rights or remedies of the CITY under this Contract or applicable law.

## **ARTICLE 12** **COVENANTS**

12.1 DESIGN-BUILDER covenants that it shall fully comply with the following provisions, in addition to all other terms, conditions and requirements of this Contract:

12.1.1 Design and Construction Contracts. DESIGN-BUILDER shall enter into binding Contracts which are made subject to the terms of this Contract with all Subconsultants, Professionals, and Subcontractors. Any modifications to those contracts shall also be made subject to the terms of this Contract. DESIGN-BUILDER'S direct contracts with all Subconsultants, Professionals, and Subcontractors shall be evidenced by a written binding document prior to Subconsultants, Professionals, and Subcontractors performing any Work on the Project. Further, DESIGN-BUILDER shall be responsible for any defaults under the terms of any Contracts with any and all of its Subconsultants, Professionals, and Subcontractors which may affect the GMP or the Project Schedule and shall repair such defaults at the DESIGN-BUILDER'S sole cost and expense, and shall enforce all of the obligations of the parties to such Contracts so as to avoid any adverse impact to the GMP and the Project Schedule. DESIGN-BUILDER shall provide to CITY, at its request, current and updated lists of its Subconsultants, Professionals, and Subcontractors which have performed or may perform any portion of the Work, and shall, upon request, provide CITY with copies of all such Contracts with any or all of them.

12.1.2 Final Construction Documents. DESIGN-BUILDER shall submit the Final Construction Documents, and each part thereof, to the CITY for review and approval, at the CITY'S sole discretion, before commencing construction of the Project.

12.1.3 Audit Requirements. DESIGN-BUILDER shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Contract which shall be available and accessible at DESIGN-BUILDER'S offices for the purpose of inspection, audit, and copying during normal business hours by the CITY or any of its authorized representatives. Such records shall be retained for a minimum of five years after completion of the services. Prior to the destruction of any records, the DESIGN-BUILDER shall notify the CITY and deliver to the CITY any records the CITY requests. DESIGN-BUILDER shall require all Subcontractors to comply with the provisions of this paragraph by insertion of the requirements hereof in a written Contract between DESIGN-BUILDER and the Subcontractor.

12.1.4 Compliance With Requirements. DESIGN-BUILDER shall cause the Project to be constructed in strict compliance with the Final Construction Documents and all requirements of all laws, rules, codes and regulations applicable to the Site and the Project.

### **ARTICLE 13** **INSURANCE REQUIREMENTS**

13.1 INSURANCE COVERAGES REQUIRED. DESIGN-BUILDER and, where designated, each of its Subconsultants, Professionals, and Subcontractors shall obtain and maintain during the full duration of Work required under this Contract, and through any period of limitation allowed by law for actions for personal injury, bodily injury, disease, death, property damages and other losses or damages required to be insured hereunder, the following insurance coverages, in the type, amounts, terms and in conformance with the following minimum requirements. All policies and endorsements shall be issued on Insurance Service Office (ISO) forms or on forms providing broader and no less restrictive coverage. Notwithstanding the foregoing, the form and content of all policies and endorsements must be acceptable to the CITY. Unless specifically waived hereafter in writing by the Risk Manager for the City, DESIGN-BUILDER agrees that the insurer(s) shall waive its rights of subrogation, if any, against the City on all policies required below.

All liability insurance policies, other than the Worker's Compensation and Employers' Liability Policy and Professional Liability Policy, obtained by the DESIGN-BUILDER to meet the requirements of this Contract, shall name the CITY as an additional insured as to the operations of the DESIGN-BUILDER under this Contract and shall contain the "Severability of Interests" provision. In addition, all policies required shall be written as primary policies and not contributing to nor in excess of any coverage CITY may choose to maintain. The insurance coverages must cover all of the DESIGN-BUILDER'S activities under this Contract whether on CITY'S property or not.

13.2 Design-Builder's Insurance.

13.2.1 Coverages Required: After the execution of the GMP Amendment and prior to receiving a notice to proceed for construction phase services, the

Design-Builder shall purchase, and maintain throughout the Construction Phase, the following types and amounts of insurance, in form and companies satisfactory to the Owner:

- (1) **Workers' Compensation Insurance:** As required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of the Design-Builder, employed at the site of the work or in any way connected with the work, which is the subject of this service. The insurance required by this provision shall comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.
- (2) **Liability Insurance:** Commercial General Liability Insurance, including coverage for operations, independent Contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring the Design-Builder and any other interests, including but not limited to any associated or subsidiary companies involved in the work.; and Automobile Liability Insurance, which shall insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the Design-Builder at the site of the project or in any way connected with the work which is the subject of this agreement.

THE LIABILITY INSURANCE SHALL NAME THE OWNER AS AN ADDITIONAL INSURED.

The limit of liability shall be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate shall be in an amount of no less than \$1,000,000.

- (3) **Builders' Risk:** On an "all risk" basis, including but limited to the completed value basis on the insurable portion of the work for the benefit of the Owner, the Design-Builder and Subcontractors as their interests may appear. The Owner, the Design-Builder and any Subcontractor insured therein waive all rights against each other for damages caused by fire and other perils to the extent covered by the insurance obtained pursuant to this paragraph.
- (4) **Installation Floater:** On an "all risk" basis, including but not limited to, the perils of theft, vandalism and malicious mischief, on 100 percent of the value of the contract **or 100 percent on that portion of the Contract that is insurable under an Installation Floater** in a form satisfactory to the Owner, and for the benefit of the Owner, the Design-Builder and Subcontractors as their interests may appear. The Owner, the Design-Builder and any Subcontractor insured therein waive all rights against each other for damage

caused by fire and other perils to the extent covered by the insurance obtained pursuant to this paragraph.

- (5) **Professional Liability.** DESIGN-BUILDER shall obtain and require all Professionals, including all architects, engineers, and surveyors, performing or providing any of the Work as Consultants or Subconsultants required under this Contract, as Named Insured, to carry Professional Liability coverage in the amount of \$1,000,000 minimum for any errors or omissions in the Work.

(i) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written so as to provide an applicable deductible or self-insured retention amount(s), or other exclusions or limitations as to the amount of coverage to be provided within the minimum coverage limits set forth above, DESIGN-BUILDER shall be responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible or self-insured retention amount(s), exclusions or limitations, DESIGN-BUILDER shall be required to provide the CITY with written documentation acceptable to the CITY that DESIGN-BUILDER has the financial resources readily available to cover damages, injuries and/or losses which are not covered as a result of the policy(s) deductible amount(s), exclusions and/or limitations as stated above.

(ii) If the foregoing policy (or policies, as applicable) is a claims-made policy, the DESIGN-BUILDER and Professional(s) shall maintain the policy(s) continuously for a period of at least five years from the Final Completion Date, or shall purchase the necessary tail coverage to cover the additional five-year period. In the event of cancellation or nonrenewal of any Professional Liability insurance coverage required hereunder, the DESIGN-BUILDER and Professional(s) shall obtain the maximum extended claims reporting period(s) permitted under the policy(s).

(iii) Any deductible amount shall not be greater than \$250,000.00 each claim unless approved in writing by the CITY. Any and all deductible(s) and self-insured retention amount(s) shall be the responsibility of the DESIGN-BUILDER and the insured Professional(s).

(iv) Professional Liability insurance policies provided hereunder must cover all contractual liability and warranties, without any exclusions, or the Professional(s) shall be required to enter into direct Contracts with the CITY. Lack of privity between the CITY and any Professional shall not be a defense to any claim by the CITY for loss or damage.

(v) DESIGN-BUILDER'S inability or failure to obtain Professional Liability coverage for services performed by the DESIGN-BUILD

entity shall not relieve it of any liability or responsibility for any design errors or omissions by it or any of its Professionals.

13.2.2 **Proof of Insurance:** The Design-Builder shall furnish proof of insurance acceptable to the Owner prior to or at the time of execution of the agreement and the Design-Builder shall not commence work under this agreement until he has obtained all the insurance required under this agreement and such insurance has been filed with and approved by the Owner, nor shall the Design-Builder allow any Subcontractor to commence work on its subcontract until similar insurance required of the Subcontractor has been so obtained and approved. The Design-Builder shall furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard and the expiration dates,

If requested by the Owner, the Design-Builder will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the Owner.

13.2.3 **Maintenance of Insurance:** The Design-Builder shall file replacement certificates 30 days prior to expiration of termination of the required insurance occurring prior to the acceptance of the work by the Owner. In the event such insurance shall lapse, the Owner expressly reserves the right to renew the insurance at the Design-Builder's expense. The Design-Builder may not cancel the insurance required by this Contract until the work is completed, accepted by the Owner and the Design-Builder has received written notification from the Risk Management Division of the City of Daytona Beach that the Design-Builder may cancel the insurance required by this agreement and the date upon which the insurance may be cancelled. The Risk Management Division will provide such written notification at the request of the Design-Builder if the request is made no earlier than two weeks before the work is to be completed.

Anything to the contrary notwithstanding, the liabilities of the Design-Builder under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration, limitation, exclusion or termination of insurance coverage. Neither approval nor failure to disapprove insurance furnished by the Design-Builder shall relieve the Design-Builder or its sub-contractors from responsibility to provide insurance as required by the contract.

13.3 PAYMENT AND PERFORMANCE BONDS. DESIGN-BUILDER shall obtain and maintain the following Payment and Performance Bonds in the type, amounts and in conformance with the following minimum requirements.

13.3.1 DESIGN-BUILDER shall furnish the CITY with a Performance Bond and Payment Bond, each equal to the amount of the GMP at the time CITY issues Notice to Proceed with Construction Services. It shall be the DESIGN-BUILDER'S responsibility to furnish and record in the Public Records of Volusia County the

executed Performance and Payment Bonds prior to Notice To Proceed with Construction Services. The Performance Bond shall name the DESIGN-BUILDER as Principal and be conditioned upon the timely and complete performance by DESIGN-BUILDER of all undertakings, covenants, terms and obligations under this Contract. It shall further provide affirmative coverage for liquidated damages suffered by the CITY caused by or arising from DESIGN-BUILDER'S failure to timely perform its obligations under this Contract. The Payment Bond shall be conditioned upon the prompt payment by DESIGN-BUILDER and its Subcontractors, to all persons, firms and entities supplying all labor, services and materials in the prosecution of the Work.

13.3.2 The Performance and Payment Bonds shall be executed by DESIGN-BUILDER and a corporate bonding company(s), acceptable to the CITY and licensed to transact such business in the State of Florida, rated as an A.M. Best "A-" rated company. All payments, expenses and premiums shall be borne by DESIGN-BUILDER. If at any time a Surety on any such Bond is declared bankrupt, loses its right to do business in Florida or is rated lower than "A-" by Best, DESIGN-BUILDER shall, within ten (10) days of the occurrence of such event, substitute an acceptable Bond (or Bonds) in such form and sum and signed by other Surety or Sureties as may be satisfactory to the CITY. In such event, no payments shall be due or made by the CITY until the new Surety or Sureties shall have furnished an acceptable Bond(s) to the CITY.

#### **ARTICLE 14** **DEFAULT, TERMINATION AND OTHER REMEDIES**

14.1 EVENTS OF DEFAULT. Without limiting the effect of any other provision of this Contract, the occurrence of any of the events listed in Articles 14.1.1 through 14.1.16 shall be deemed a default under this Contract and shall permit CITY to terminate this Contract and/or seek all remedies set forth in this Contract, or otherwise available in law and equity.

14.1.1 DESIGN-BUILDER or any of its Subconsultants, Professionals, or Subcontractors fails to comply with, perform and/or maintain any term, covenant, condition, duty, obligation, liability, representation or warranty of this Contract which the CITY determines to be material in the manner or within the time required by this Contract;

14.1.2 DESIGN-BUILDER files a petition to take advantage of any Debtor's Act or to reorganize under the bankruptcy or similar laws, or a court of competent jurisdiction enters an order, judgment or decree approving a petition filed by or against DESIGN-BUILDER or its Subconsultants, Professionals or Subcontractors, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future, federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors;

14.1.3 DESIGN-BUILDER makes a general assignment for the benefit of its creditors;

14.1.4 A trustee or receiver is appointed for DESIGN-BUILDER or for any of its property;

- 14.1.5 The termination, liquidation or dissolution of DESIGN-BUILDER;
- 14.1.6 The issuance of a writ of execution, garnishment, levy, attachment or similar process against DESIGN-BUILDER in connection with a claim for the payment of money or damages relating to the Project in excess of \$100,000.00, if the writ is not stayed or vacated within five (5) days after the issuance of it;
- 14.1.7 DESIGN-BUILDER repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or fails to make prompt payments to Subconsultants or Subcontractors or for labor, materials, or equipment;
- 14.1.8 DESIGN-BUILDER disregards the authority of the Project Manager;
- 14.1.9 The violation by DESIGN-BUILDER of any law, rule, regulation, order, ordinance or decree of any governmental agency having or claiming jurisdiction over the Work, the Project or the Site;
- 14.1.10 Through no fault of CITY, construction is discontinued or abandoned for a period of fifteen (15) days;
- 14.1.11 In the reasonable opinion of the CITY, DESIGN-BUILDER has not timely commenced any portion of the Work, and/or is not proceeding or does not proceed continuously and diligently towards completion of the Work so as to materially interfere with the Project Schedule for the completion of the Work;
- 14.1.12 DESIGN-BUILDER fails to complete the Work, except for any Punch List items, in accordance with the Final Construction Documents and this Contract on or before the Substantial Completion date;
- 14.1.13 DESIGN-BUILDER fails to complete the Work in accordance with the Final Construction Documents and this Contract on or before the Final Completion date;
- 14.1.14 Determination by CITY that any of the materials, fixtures or articles used by DESIGN-BUILDER in the construction of the Project, or the appurtenances thereto or to be used in the operation thereof, are not in strict accordance with the Final Construction Documents;
- 14.1.15 DESIGN-BUILDER fails to submit the Bonds and Certificates of Insurance in accordance with the requirements of this Contract or Policies as requested by the CITY; or
- 14.1.16 DESIGN-BUILDER fails to fully correct any defects determined to be material by the CITY.

## 14.2 TERMINATION OF WORK

14.2.1 TERMINATION FOR CAUSE. The CITY may terminate this Contract for the reasons stated in Articles 14.1.2 through 14.1.6 and 14.1.10 without giving prior notice to DESIGN-BUILDER. In the event CITY shall seek to terminate the Contract for the reasons stated in Articles 14.1.1, 14.1.7 through 14.1.9, and 14.1.11 through 14.1.16, the CITY shall first provide DESIGN-BUILDER with the opportunity to cure or remedy the default by giving DESIGN-BUILDER written notice specifying the nature of the default and allowing DESIGN-BUILDER ten (10) days after receipt of the notice to fully cure or remedy the default unless extended by the CITY. Upon termination, the CITY shall take

possession of the Project and may take possession of all materials, equipment, tools, construction equipment, and machinery thereon owned by the DESIGN-BUILDER and finish the Work by whatever method it may deem expedient. In such case, the DESIGN-BUILDER shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the GMP (excluding any remaining Contingency amounts) exceed the cost of completing the Project, including compensation for additional professional services, such excess shall be paid to the DESIGN-BUILDER. If such cost exceeds the unpaid balance, the DESIGN-BUILDER shall pay the difference to the CITY. If, after notice of termination of this Contract as provided for herein, it is determined for any reason that the DESIGN-BUILDER was not in default, or that its default was excusable, or that the CITY was not entitled to the remedy against DESIGN-BUILDER provided herein, the termination will be deemed to be a termination for convenience and the DESIGN-BUILDER'S remedies against the CITY shall be the same as and limited to those afforded there under. Where the DESIGN-BUILDER'S services have been so terminated pursuant to the above by the CITY, said termination shall not affect any rights of the CITY against the DESIGN-BUILDER then existing or which may thereafter accrue. CITY may, in the alternative, and without waiving any rights under this Contract, withhold from DESIGN-BUILDER any payment due or to become due until such default is cured. Any correction or replacement of the Defective Work shall be at the sole expense of the DESIGN-BUILDER without any cost to the CITY. CITY'S retention of payment of monies due the DESIGN-BUILDER will not release the DESIGN-BUILDER from liability.

14.2.1.1 STOP WORK. Whenever the CITY has the right to terminate the Contract for cause, the CITY may, without waiving any rights under the Contract, order the DESIGN-BUILDER to stop the Work or any portion thereof until the cause for such order has been eliminated. This right is in addition or as an alternative to termination for cause. However, this right of the CITY to stop the Work shall not give rise to any duty on the part of the CITY to exercise this right for the benefit of the DESIGN-BUILDER or any other party. The DESIGN-BUILDER shall have no right to claim an increase in the GMP or Contract Time or other damages for such order to stop the Work.

14.2.1.2 CORRECTION OF WORK BY CITY. If, after receiving notice and an opportunity to cure pursuant to Article 14.2.1, DESIGN-BUILDER defaults or neglects to carry out the Work, or any portion thereof, CITY may, in addition or as alternative to termination for cause and without prejudice to other remedies CITY may have, correct such deficiencies, defaults or neglects. In such case, an appropriate Change Order shall be issued deducting, on a dollar for dollar basis, from any payment then or thereafter due DESIGN-BUILDER, all costs of correcting such deficiencies, defaults or neglects. All costs of such correction shall be paid by the DESIGN-BUILDER or deducted from payment to DESIGN-BUILDER. The DESIGN-BUILDER shall also bear the expense of correcting or removing and replacing all Work of others destroyed or damaged by the correction, removal, or replacement of the Defective Work. If the payments then or thereafter due DESIGN-BUILDER are not sufficient to cover the amount of the deduction, DESIGN-BUILDER shall immediately, but no later than fifteen (15) days after such correction, pay the difference to CITY.

#### 14.2.2 TERMINATION FOR CONVENIENCE

14.2.2.1 The performance of Work under this Contract may be terminated by the CITY in accordance with this clause in whole, or from time to time in part, whenever the CITY shall determine that such termination is in the best interest of the CITY. Any such termination shall be effected by delivery to the DESIGN-BUILDER of a Notice of Termination for Convenience specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

14.2.2.2 After receipt of a Notice of Termination for Convenience, and except as otherwise directed by the CITY, the DESIGN-BUILDER shall:

- (i) Stop Work under this Contract on the date and to the extent specified in the Notice of Termination for Convenience;
- (ii) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work under this Contract as is not terminated;
- (iii) Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination for Convenience;
- (iv) In the sole discretion of the CITY, the DESIGN-BUILDER shall either:
  - (1) assign to the CITY, in the manner, at the time, and to the extent directed by the Project Manager, all of the right, title, and interest of the DESIGN-BUILDER under some or all of the orders and subcontracts so terminated; or
  - (2) settle all outstanding liabilities and all claims arising out of such termination of nonassigned orders and subcontracts.
- (v) Transfer title and deliver to the CITY, in the manner, at the times and to the extent, if any, directed by the Project Manager, the fabricated or unfabricated parts, Work-in-progress, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of the Work terminated by the Notice of Termination for Convenience.
- (vi) Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination for Convenience.
- (vii) Take such action as may be necessary or as the CITY may direct, for the protection and preservation of the property related to this Contract which is in the possession of the DESIGN-BUILDER and in which the CITY has or may acquire an interest.

14.2.2.3 After receipt of a Notice of Termination for Convenience, the DESIGN-BUILDER shall submit to the CITY its termination claim, in accordance with the procedures set forth in Article 10. DESIGN-BUILDER shall make every reasonable attempt to mitigate its costs resulting from the CITY'S Termination for Convenience. DESIGN-BUILDER'S claim shall be submitted promptly, but in no event later than four months from the effective date of termination unless one or more extensions in writing are granted by the CITY. Upon failure of the DESIGN-BUILDER to submit its termination

claim within the time allowed, the CITY shall determine, on the basis of information available to it, the amount, if any, due to the DESIGN-BUILDER by reason of the Termination for Convenience.

14.2.2.4 The DESIGN-BUILDER and the CITY may agree upon the whole or any part of the amount or amounts to be paid to the DESIGN-BUILDER by reason of the total or partial termination of Work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on Work done; provided, that such agreed amount or amounts shall not exceed the total GMP (less any remaining Contingency amounts described in Article 9) as reduced by the amount of payments otherwise made and as further reduced by the GMP not terminated. The Contract shall be amended accordingly and the DESIGN-BUILDER shall be paid the agreed upon amount.

14.2.2.5 In the event of the failure of the DESIGN-BUILDER and the CITY to agree on the whole amount to be paid to the DESIGN-BUILDER by reason of the termination of Work pursuant to this Article, the CITY shall pay, on the basis of information available to it, with respect to all Work performed prior to the effective date of the Notice of Termination for Convenience, the total (without duplication of any items) of the cost of such Work, and a sum as profit, equal to XX% of the cost of the completed Work. In the event the parties are unable to reach agreement as to the cost of such Work, the parties retain the right to seek judicial resolution of their dispute. In no event shall the DESIGN-BUILDER be entitled to recover any anticipated or lost profit on Work not performed as a result of the termination.

14.2.2.6 Notwithstanding any provision to the contrary, the total sum to be paid to the DESIGN-BUILDER shall not exceed the total GMP (less any remaining Contingency amounts) as reduced by the amount of payments otherwise made and as further reduced by the GMP of Work not terminated. Except for normal spoilage, and except to the extent that the CITY shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the DESIGN-BUILDER, the fair value as determined by the CITY, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the CITY.

14.2.2.7 In arriving at the amount due the DESIGN-BUILDER for termination for convenience, there shall be deducted:

- (i) all unliquidated advance or other payments on account theretofore made to the DESIGN-BUILDER, applicable to the terminated portion of this Contract;
- (ii) any claim which the CITY may have against the DESIGN-BUILDER in connection with this Contract; and
- (iii) the agreed upon price for, or the proceeds of sale of, any materials, supplies, or other things kept by the DESIGN-BUILDER, or sold pursuant to the provisions of this clause, and not otherwise recovered by or credited to the CITY.

14.2.3 TERMINATION FOR FAILURE TO PERFORM IN A TIMELY MANNER. Should DESIGN-BUILDER fail to commence, provide, perform and/or complete any of the Work necessary to achieve timely Substantial Completion or Final Completion, then

the CITY may terminate this Contract in accordance with the requirements of Article 14.2.1, and may seek all remedies as set forth in this Contract, including the right to take over the Work, and possession and control of all tools, supplies, equipment and materials associated therewith. In addition, or as an alternative, to such termination, and with the same notice, CITY may, at its option, withhold any or all payments due and/or owing to DESIGN-BUILDER, not to exceed the amount of the compensation for the Work in dispute as determined by the CITY, until such time as DESIGN-BUILDER resumes performance of its obligations in such a manner as to correct any such failures and to get back on schedule in accordance with the Project Schedule. DESIGN-BUILDER may be required to submit a recovery plan and to take specific corrective actions including, but not limited to, employing additional workmen and/or equipment, and working extended hours and additional days, all at no cost to the CITY, in order to put the Project back on schedule.

#### 14.3 TERMINATION FOR FAILURE TO NEGOTIATE A GMP.

Owner may terminate this Agreement for convenience in accordance with this article in the event the City and Design-Builder fail to negotiate a GMP. Pursuant to Article 17 all documents and records regardless of form or format shall be turned over to the City. Design/Builder including the Design Professional hereby expressly consent to the employment by Owner of a substitute design professional to complete the Design Services under this Agreement, with the substitute design professional having all of the rights and privileges of the original Design professional.

14.4 ASSIGNMENT OF ALL CONTRACTS AND AGREEMENTS. In the event that CITY terminates this Contract for any reason, DESIGN-BUILDER shall, at the request of CITY, assign over to CITY all or some of DESIGN-BUILDER'S rights, title and interest in and to all or some of its Contracts with all Professionals, Subconsultants, and Subcontractors. If the CITY requests such assignment(s), the CITY shall only assume future responsibilities and obligations under the Contracts, and DESIGN-BUILDER shall be liable for all of its responsibilities and obligations under the Contracts prior to the time of assignment. In no event shall such assignment(s) be construed to be a novation by the CITY.

### **ARTICLE 15** **SUSPENSION OF WORK**

15.1 SUSPENSION OF WORK. The CITY may at any time suspend the Work or any portion thereof for a continuous period of not more than 90 days by notice in writing to the DESIGN-BUILDER. The Project Manager shall fix the date on which Work shall be resumed, and the DESIGN-BUILDER shall resume the Work on the date so fixed. The DESIGN-BUILDER shall be allowed an extension of the Contract Time if directly attributable to any such suspension, provided it makes a proper claim for same as provided for in Article 10. DESIGN-BUILDER shall not be entitled to any damages or additional compensation for any such suspensions. However, DESIGN-BUILDER shall only be allowed the reasonable costs for General Requirements and Subcontractor re-mobilization that are directly attributable to the suspensions. Pricing of such cost shall be in accordance with Article 10.

**ARTICLE 16**  
**INDEMNIFICATION**

16.1 INDEMNIFICATION. DESIGN-BUILDER shall indemnify and hold harmless CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence or wrongful misconduct of DESIGN-BUILDER and any persons employed or utilized by DESIGN-BUILDER in the performance of this Contract.

**ARTICLE 17**  
**OWNERSHIP OF DOCUMENTS AND MAINTENANCE OF RECORDS**

17.1 All documents, data, studies, surveys, analyses, sketches, tracings, specifications, plans, designs, design calculations, details, computations, drawings, maps, models, photographs, reports, and other documents and plans resulting from Design Builder's services under this Agreement shall become the property of and shall be delivered to CITY without restriction or limitation as to use regardless of the format of the document (paper or electronic). However, any use subsequent to or other than for the specific project for which such items were created, shall be at sole risk of CITY.

17.2 Design Builder's agrees that any software, computer systems and databases used for providing the documents necessary to this Agreement shall be compatible with existing CITY software and systems. It is anticipated that the software utilized will be run on windows based PC's and will consist of AutoCAD release 2018, ICPR, Microsoft Word 2016, Microsoft Excel 2016, Microsoft Project 2016, Microsoft PowerPoint 2016, and Adobe Reader 17.

17.3 CITY agents, employees and representatives shall have the right to visit the offices of DESIGN-BUILDER, and its Professionals, Subconsultants and Subcontractors for inspection of the Work, drawings, specifications, test data, and related materials at any time during normal business hours.

17.4 The CITY shall also have the right to obtain a copy of and otherwise inspect, any audit made at the direction of DESIGN-BUILDER as concerns the aforesaid records and documentation.

17.5 Adequate records shall include accounting, in detail sufficient for a proper preaudit and postaudit, of all charges that relate to the Work. Expenses and other direct costs shall be itemized and an explanation shall be furnished stating why the charge is applicable to the Project.

17.6 DESIGN-BUILDER shall permit CITY to examine and copy:

- (i) all drawings, specifications, plans, shop drawings, field notes, field reports, daily reports, logs and all other documents which the CITY shall deem related to the Work;
- (ii) all of DESIGN-BUILDER'S books, records and accounts relating to Work contracted, materials ordered and received, and all disbursements and accounts payable in connection with the Project and;
- (iii) certificates and reports of inspecting architects, engineers and public officials; and

- (iv) all subcontracts, bills, bank accounts, payroll records, employment records and other records pertaining to the Project.

DESIGN-BUILDER shall maintain such records in a single, consolidated, easily accessible location for a minimum period of five years.

17.7 (a) To the extent applicable, Design-Builder will comply with the requirements of Florida Statutes Section 119.0701, which include the following:

(1) Keeping and maintaining public records that the CITY requires for performance of the service provided herein.

(2) Upon the request of the City Clerk of the CITY, (i) providing the City Clerk with a copy of requested public records or (ii) allowing inspection or copying of the records, within a reasonable time after receipt of the City Clerk's request, at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law.

(3) Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law until completion of this Contract, and following such completion if Design-Builder fails to transfer such records to the CITY.

(4) Upon completion of this Contract, keep and maintain public records required by the CITY to perform the service. Design-Builder will meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY upon request from the City Clerk, in a format that is compatible with the CITY's information technology systems.

**IF THE DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, DESIGN-BUILDER MUST CONTACT THE CITY CLERK, WHOSE CONTACT INFORMATION IS AS FOLLOWS:**

(Phone)	386 671-8023
(Email)	clerk@codb.us
(Address)	301 S. Ridgewood Avenue Daytona Beach, FL 32114

(b) Nothing herein will be deemed to waive Design-Builder's obligation to comply with Section 119.0701(3)(a), Florida Statutes, as amended by Chapter 2016-20, Laws of Florida (2016).

17.8. CITY may unilaterally cancel this Contract for refusal by DESIGN-BUILDER to allow public access to all documents, papers, letters, or other materials made or received by DESIGN-BUILDER in conjunction with the Contract unless such records are exempt

under Section 24(a) of Art. I of the Florida Constitution and Section 119.07(1), Florida Statutes.

### **ARTICLE 18** **ASSIGNMENT**

18.1 ASSIGNMENT. DESIGN-BUILDER shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from:

(i) the merger or consolidation of DESIGN-BUILDER with a third party, which merger or consolidation has been approved in writing by CITY; or

(ii) the disestablishment of DESIGN-BUILDER'S Professional practice and the establishment of successor Subconsultants or Professionals, or consulting organization, all as approved by CITY.

Further, DESIGN-BUILDER shall not subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Contract, without prior written approval of CITY. DESIGN-BUILDER shall have the right, subject to the CITY'S prior written approval, to employ other persons and/or firm, other than or in addition to those preliminarily listed by DESIGN-BUILDER, and upon which preliminary list CITY has materially relied in entering into this Contract, to serve as Professionals, Subconsultants, and/or Subcontractors to DESIGN-BUILDER in connection with DESIGN-BUILDER providing and performing the Work pursuant to the requirements of this Contract.

### **ARTICLE 19** **RELIANCE UPON REPRESENTATIONS** **AND STATEMENTS OF ASSURANCE**

19.1 STATEMENT OF ASSURANCE. In the performance of this Contract, DESIGN-BUILDER herein assures CITY that DESIGN-BUILDER is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that DESIGN-BUILDER does not, on the grounds of race, color, national origin, religion, sex, age, handicap or marital status, discriminate in any form or manner against DESIGN-BUILDER'S employees or applicants for employment. DESIGN-BUILDER understands and agrees that this Contract is conditioned upon the veracity of this Statement of Assurance. Other applicable federal and state laws, executive orders, and regulations prohibiting the type of discrimination as herein above delineated are included by this reference.

19.2 TRUTH-IN-NEGOTIATION CERTIFICATE. In accordance with Section 287.055, Florida Statutes, signature of this Contract by DESIGN-BUILDER shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting. The GMP and any additions thereto shall be adjusted to exclude any significant sums by which CITY determines the GMP was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such Contract adjustments shall be made within one year following the end of this Contract.

19.3 RELIANCE UPON DESIGN-BUILDER. DESIGN-BUILDER acknowledges and agrees that its experience and expertise in the performance of the Scope of Work required under this Contract, as represented in its Proposal submitted in response to the RFP is a

material inducement to CITY entering into this Contract. The CITY does not make any representation and assumes no obligations or duties as to third parties concerning the quality, sufficiency or accuracy of the design and/or construction by DESIGN-BUILDER of the Project or the absence of any defects. The CITY'S review and approval of the Final Construction Documents, and each component thereof, and the construction of the Project, is and will be done as a matter of right only and not as a matter of obligation, and shall not be a representation to any third party of the quality, soundness or integrity of the design and construction of the Project. The CITY is strictly relying on DESIGN-BUILDER'S expertise and experience with respect to the quality, sufficiency and accuracy of the Final Construction Documents and the construction of the Project, including but not limited to, the functional soundness and structural integrity of the Project. This Article shall survive the termination of this Contract and shall continue in full force and effect so long as the possibility of any liability, claim or loss exists.

## **ARTICLE 20**

### **MISCELLANEOUS**

20.1 CITY APPROVAL. Unless expressly stated otherwise, in all instances in which the CITY'S approval is required under this Contract, the CITY shall not unreasonably withhold such approval and shall provide such approval in a timely manner. The above provision shall not be construed to require the CITY in any way to waive its rights to the DESIGN-BUILDER'S full performance of its obligations under the Contract.

20.2 APPLICABLE LAW; VENUE. This Contract shall be governed by the laws, rules and regulations of the State of Florida. The parties agree that venue for any action relating to this Contract or the Project shall be in Volusia County, Florida.

20.3 NO WAIVER OF BREACH. Waiver by either party of a breach of any provision of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Contract.

20.4 HEADINGS AND NUMBERS; CAPITALIZATIONS; USAGE. The Headings and Numbers of the Articles, Sections, Paragraphs, Exhibits and Attachments, as contained in this Contract, and the use of capitalized terms in this Contract, are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Paragraphs, Exhibits and Attachments. Further, as terms are used herein, the singular shall mean plural and there shall be no distinction as to gender, when interpreting or construing such terms.

20.5 ENTIRE CONTRACT. This Contract, including the Exhibits and Attachments hereto and documents included by reference herein, constitutes the entire Contract between the parties hereto and shall supersede, replace and nullify any and all prior contracts or understandings, written or oral, relating to the matters set forth herein, and any such prior contracts or understandings shall have no force or effect whatever on this Contract.

20.6 EXHIBITS. The Exhibits to this Contract, which are referred to herein, are acknowledged, understood and agreed to be an integral part of this Contract.

20.7 CHANGE OF ADDRESS. Either party may change its address by written notice to the other party.

20.8 CUMULATIVE REMEDIES. All rights, powers and privileges conferred by this Contract upon the parties shall be cumulative and in addition to those otherwise provided by law and, unless specifically stated, shall not be deemed to preclude any right or remedy provided by law.

20.9 SUCCESSORS AND ASSIGNS. This Contract shall be binding upon the successors and assigns of the parties hereto, subject to Article 18 above.

20.10 SEVERABILITY. If any provision of this Contract is determined to be invalid or unenforceable, such determination shall not affect the validity or enforceability of the other provisions of this Contract.

20.11 ACCEPTANCE. Acceptance of this Contract shall be indicated by the signature of the duly authorized representative of the herein above-named parties in the space provided hereinafter and being attested and witnessed as indicated.

20.12 AUTHORITY TO SIGN CONTRACT. CITY and DESIGN-BUILDER both warrant to the other that they, and the persons executing this Agreement on behalf of each of them, have the right, power and authority to execute this Contract.

20.13 NOTICE. Any notice required or permitted to be sent hereunder shall be sent certified mail, return receipt requested to the parties at the addresses listed below:

CONSULTANT:

CITY:

Name:

Name:

Address:

Address:

Copy to:

**ARTICLE 21.**  
**EMPLOYEE RESTRICTIONS**

21.1. CITY will not intentionally award publicly-funded contracts to any Design-Builder who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The CITY shall consider employment by any Consultant or subconsultant or subcontractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Design-Builder of the employment provisions contained in Section 274A(e) of the INA shall be grounds for termination of this Agreement by the CITY.

21.2. The Consultant shall incorporate the terms of paragraphs 21.1 and 21.2 into all contracts with any subconsultants or subcontractors.

**REMAINDER OF PGE INTENTIONALLY LEFT BLANK.**  
**SIGNATURE PAGE TO FOLLOW**

**IN WITNESS WHEREOF**, authorized representatives of the Parties have signed this Agreement on the dates indicated below.

<p>The City of Daytona Beach</p> <p>By _____ Derrick L. Henry, Mayor</p> <p>Date: _____</p> <p>Attest: _____ Letitia LaMagna, City Clerk</p> <p>Approved at to legal form:</p> <p>By: _____ Robert Jagger, City Attorney</p>	<p>COMPANY</p> <p>By: _____</p> <p>Date: _____</p>
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Exhibit List

- Exhibit A – Scope of Work and Fee Schedule
- Exhibit B – Safety and Health Requirements
- Exhibit C- Submittal Form