

## SOLICITATION - OFFER - AWARD

<b>SOLICITATION No.:</b> <b>RFP 21-R00077/PH</b>	<b>SOLICITATION TITLE:</b> <b>Design-Build of Lockhart Water Treatment Plant Expansion Project</b>	<b>DATE ISSUED:</b> <b>November 17, 2021</b>	<b>CONTRACT No.:</b> <b>RFP 21-R00077/PH</b>
<b>ISSUED BY:</b> <b>BOARD OF COUNTY COMMISSIONERS</b> <b><u>HERNANDO COUNTY, FLORIDA</u></b> Steve Champion, Chairman John Allocco, Vice Chairman Beth Narverud, Second Vice Chairman Wayne Dukes Jeff Holcomb		<b>SUBMIT BID OFFER TO:</b>  <b>PURCHASING AND CONTRACTS DEPARTMENT</b> <b>15470 FLIGHT PATH DRIVE</b> <b>BROOKSVILLE, FL 34604</b>  <p style="text-align: center;"><i>Toni Brady</i> <b>Chief Procurement Officer</b></p>	

### SOLICITATION

SEALED OFFERS, IN ONE (1) ORIGINAL, FOUR (4) COPIES AND ONE (1) CD OR FLASH DRIVE, FOR FURNISHING THE SERVICES DESCRIBED HEREIN WILL BE RECEIVED AT THE PURCHASING AND CONTRACTS DEPARTMENT, 15470 FLIGHT PATH DRIVE, BROOKSVILLE, FL 34604, **UNTIL 3:00 P.M., LOCAL TIME ON FEBRUARY 23, 2022.** NO PROPOSALS WILL BE ACCEPTED AFTER THE ABOVE STIPULATED DATE AND TIME. THIS IS AN ADVERTISED SOLICITATION. **THE PROPOSALS WILL BE OPENED PUBLICLY AT 3:00 P.M. ON THE SAME DAY.**

PURSUANT TO FS 119.071 (Current Edition), SEALED BIDS, PROPOSALS, OR REPLIES RECEIVED BY AN AGENCY PURSUANT TO A COMPETITIVE SOLICITATION ARE EXEMPT FROM INSPECTION UNTIL SUCH TIME AS THE AGENCY PROVIDES NOTICE OF AN INTENDED DECISION OR UNTIL SIXTY (60) DAYS AFTER OPENING THE BIDS, PROPOSALS, OR FINAL REPLIES, WHICHEVER IS EARLIER.

	DESCRIPTION OF SERVICE/SUPPLIES/EQUIPMENT	QTY	UNIT	UNIT PRICE	TOTAL AMOUNT
1	Hernando County is requesting sealed Proposals from qualified individuals or firms to provide Design-Build of Lockhart Water Treatment Plant Expansion Project.  <u>PLEASE SUBMIT ONE (1) ORIGINAL SIGNED DOCUMENT, FOUR (4) COPIES AND ONE (1) CD OR FLASH DRIVE.</u>  (SEE ATTACHED SPECIFICATIONS)	XXXX	XXXX	XXXXXXXX	XXXXXXXXXXXXXX

### OFFER

(TERMS, CONDITIONS AND SPECIFICATIONS ARE INCLUDED AS PARTS HEREOF)

IN COMPLIANCE WITH THE ABOVE, THE UNDERSIGNED, BEING DULY AUTHORIZED TO SIGN THIS PROPOSAL FOR THE PROPOSER.				
<b>DISCOUNT FOR PROMPT PAYMENT: <u>N/A</u> % 10 CALENDAR DAYS <u>N/A</u> % 20 CALENDAR DAYS <u>N/A</u> % <u>N/A</u> CALENDAR DAYS</b>				
PROPOSER'S INFORMATION  <hr/> Company Name  <hr/> Address  <hr/> City      State      Zip Code  <hr/> Phone Number      Fax Number      Email Address	NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER:  <table style="width: 100%; border: none;"> <tr> <td style="width: 80%; border: none; vertical-align: top;">                     PROPOSER'S SIGNATURE                 </td> <td style="width: 20%; border: none; vertical-align: top;">                     OFFER DATE                 </td> </tr> </table>		PROPOSER'S SIGNATURE	OFFER DATE
PROPOSER'S SIGNATURE	OFFER DATE			

### AWARD

(TO BE COMPLETED BY COUNTY)

REVIEWED FOR LEGAL SUFFICIENCY 10/27/21	LR No.: 20-158-2	BY: Maureen S. Sikora		
ACCEPTED AS TO ITEM(S) No:	AMOUNT:	ACCOUNTING CODE:		
SUBMIT INVOICES TO: <b>HERNANDO COUNTY</b> <b>UTILITIES DEPARTMENT</b> <b>15365 CORTEZ BLVD., BROOKSVILLE, FL 34613</b>	NAME AND TITLE OF PERSON AUTHORIZED TO SIGN ACCEPTANCE AND AWARD FOR THE COUNTY:  <table style="width: 100%; border: none;"> <tr> <td style="width: 70%; border: none; vertical-align: top;">                     SIGNATURE:                 </td> <td style="width: 30%; border: none; vertical-align: top;">                     AWARD DATE:                 </td> </tr> </table>		SIGNATURE:	AWARD DATE:
SIGNATURE:	AWARD DATE:			

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SECTION I

REQUEST FOR PROPOSALS  
**DESIGN-BUILD OF LOCKHART WATER TREATMENT PLANT EXPANSION PROJECT**  
**RFP NO. 21-R00077/PH**



The Hernando County Board of County Commissioners, Hernando County, Florida, invites interested parties to submit Proposals **no later than 3:00 PM, FEBRUARY 23, 2022**, for **DESIGN-BUILD OF LOCKHART WATER TREATMENT PLANT EXPANSION PROJECT** to the Board of County Commissioners.

The County has selected three (3) Proposers from the Proposers who submitted a response to the RFQ for the Project described below pursuant to this REQUEST FOR PROPOSALS ("RFP"). By submitting a Proposal, the Proposer represents that it has carefully read the terms and conditions of this RFP, including all attachments and Addenda, and agrees to be bound by them.

All Proposals must be submitted pursuant to the instructions below. It is the Proposer's sole responsibility to ensure that the Proposal is delivered in the manner required in this RFP by the Due Date and Time. County has the right to reject any Proposals not properly delivered.

Qualified firms desiring consideration shall submit one (1) original, (4) copies and one (1) CD or flash drive of the proposal package, clearly marked "Sealed Proposals for **RFP No. 21-R00077/PH – Design-Build of Lockhart Water Treatment Plant Expansion Project**" to Hernando County Purchasing and Contracts Department, 15470 Flight Path Drive, Brooksville, Florida 34604, on or before the time stipulated above. Proposals shall be plainly marked on the outside of a sealed envelope/container with: Firm's name and address, and Proposal Name and Proposal Number. Proposals are to be submitted:

**Physical Address:**

Hernando County Purchasing & Contracts  
 15470 Flight Path Drive  
 Brooksville, FL 34604

The Board of County Commissioners will not be responsible in the event the U.S. Postal Service or any other courier system fail to deliver any Proposal by the deadline stated above.

ExParte Communication: Please note that to ensure proper and fair evaluation of a submittal, the County prohibits exparte communication (i.e. unsolicited) initiated by the Proposer to the County Official or Employee prior to the time a Proposal decision has been made. Communication between Proposer and the County will be initiated by the appropriate County Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Proposal. Exparte communication may be grounds for disqualifying the offending Proposer from consideration or award of the Proposal then in evaluation or any future Proposal.

All firms are hereby placed on formal notice that neither the County Commissioners nor candidates for County Commission, nor any employees from the Hernando County Government, Hernando County staff members, nor any members of the Professional Services Review Committee are to be lobbied, either individually or collectively, concerning this project. Firms and their agents who intend to submit qualifications, or have submitted qualifications, for this project are hereby placed on formal notice that they are not to contact County personnel for such purposes as holding meetings of introduction, meals, or meetings relating to the selection process outside of those specifically scheduled by the County. Any such lobbying activities may cause immediate disqualification for this project.

***Pursuant to Florida Statutes 119.071 (Current Edition) sealed bids, Proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from inspection until such time as the agency provides notice of an intended decision or until thirty (30) days after opening the bids, Proposals, or final replies whichever is earlier.***

The Hernando County Board of County Commissioners will select and Contract with the most qualified responsible and responsive firm responding to this solicitation and County Policy.

BOARD OF COUNTY COMMISSIONERS  
 HERNANDO COUNTY, FLORIDA

\_\_\_\_\_  
 TONI BRADY  
 CHIEF PROCUREMENT OFFICER, HERNANDO COUNTY

**NOTICE TO PROPOSERS**

To ensure that your Proposal is responsive, you are urged to request clarification or guidance on any issues involving this solicitation before submission of your response. Your point-of-contact for this solicitation is Patty Hall, Purchasing and Contracts, at (352) 754-4020, [phall@hernandocounty.us](mailto:phall@hernandocounty.us).

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## **SECTION II**

### **DEFINITIONS**

**"Addenda"** means a written or graphic instrument issued by the County prior to the execution of the Agreement which modify or interpret the Request for Proposals by additions, deletions, clarifications, corrections or other type of modifications. Addenda will become part of the Contract Documents when the Agreement is executed.

**"Agreement"** means a legal document, executed by the County and the Successful Proposer, which supersedes all prior negotiations, representations, or agreements, either written or oral. The Agreement, as amended from time to time, forms the Contract between County and the Successful Proposer setting forth the roles, responsibilities and obligations of the parties including, but not limited to, the performance of the Services and the basis of payment.

**"Business Day"** means any day on which the County is open for regularly conducted business.

**"Contract Documents"** means the Request for Proposals, including Addenda to such, the Agreement, including Addenda to such, Proposer's Proposal, Scope of Services, Certificate(s) of Insurance, Notice of Intent to Award, Notice of Award, Proposer's Representation and Certification Form, Proposer's Hold Harmless Agreement, and any other documents mailed, e-mailed or otherwise transmitted to the Proposer prior to or after the submittal of their Proposal, and prior to or after Award, all of which are all to be treated as one in the form of the Contract Documents.

**"Contractor"** means the Successful Proposer, in the context of the Request for Qualifications. In the context of the Contract Documents, Contractor means any company, firm, partnership, corporation, association, joint venture, or other legal entity permitted by law to perform the Services in the State of Florida. Such legal entity shall be the entity that enters into a written Agreement with the County to perform the Services for the Project described in the Contract Documents. The Contractor will have sole responsibility for the performance of the Services covered under an Agreement that is awarded in conjunction with this Request for Qualifications.

**"County"** means Hernando County Board of County Commissioners, its officers, employees, agents and volunteers.

**"Design-Builder"** means the entity with the prime design-build contract with the County.

**"Design-Build Team"** means all entities listed by the Design-Builder as providing services or construction on the project. The Design-Builder is not required to list all members of the Design-Build Team in the SOQ. Members of the Design-Build Team may also be referred to as "Team Members."

**"Design Criteria Package" (DCP)** means the County's Design Criteria Package which will be issued to those short-listed Proposers who are selected to proceed to the next phase of this Procurement.

**"Design Excellence"** is achieved with memorable design solutions that exceed the County's vision and defined functional requirements; include state of the art structures and facilities that are high performance and sustainable; and possess a holistic awareness that considers context, site, and the environment.

**"GST"** means Ground Storage Tank.

**"HSPS"** means High Service Pump Station.

**"Key Team Member"** means individuals who will be assigned to the Project who play an important role in the design, construction, or management of the Project.

**"Minor Irregularity"** means a variation from the Request for Proposals terms and conditions which does not affect the price or give the Proposer an advantage or benefit not enjoyed by the other Proposers or does not adversely impact the interests of the County.

**"Notice of Award"** means a written notice submitted by the County notifying the Successful Proposer that they have been awarded the project.

**"Notice of Intent to Award"** means a written notice submitted by the County notifying the Successful Proposer that the County intends to award the project to them contingent upon the Successful Proposer executing the Agreement and submitting any outstanding documents.

**"Notice to Proceed"** means a written notice issued by the County to the Successful Proposer fixing the date on which the Successful Proposer shall start the performance of the Services and the length of time for the completion of the

Services, in accordance with the Contract Documents.

**"Pre-Proposal Meeting"** means a meeting at which all Proposers gather to obtain additional information as to the scope of Services required under the Request for Proposals.

**"Procurement"** means the County's process for selecting a Design-Build Team for this Project.

**"Procurement Documents"** means all documents issued by the County in connection with the Procurement or Project.

**"PSRC"** means County employees selected to evaluate and score the Proposals and Oral Presentation (if applicable) and recommend to the Board the Successful Proposer for an award.

**"Proposer"** means the entity that submits a Proposal to the County in response to the Request for Proposal. "Proposal" means the response to the Request for Proposal submitted by the Proposer.

**"Public Opening"** means the opening of the Proposals and the announcing of the Proposers who submitted a Proposal in response to the Request for Proposals in the presence of the public.

**"Recommendation of Award"** means a written notification sent by way of facsimile or electronic e-mail to those who submitted a Proposal in response to this Request for Proposals advising them of the County's decision for its selection of the Successful Proposer and its intent to award to that Proposer.

**"Request for Proposals" (RFP)** means the County's Request for Proposals which will be issued to those short-listed Proposers who are selected through the RFQ to proceed to this phase of this Procurement.

**"Request for Qualifications" (RFQ)** means the contents of first stage process solicitation and all supporting documents including Addendum or other related information transmitted to Proposers prior to this RFP.

**"Responsible Proposer"** means a Proposer who shows that they have the capability in all respects to perform fully the Services outlined in the Request for Proposals, and the integrity and reliability that will assure good faith performance.

**"Responsive"** means a Proposal that conforms in all material respects to the Request for Proposals requirements.

**"ROW"** means Right of Way.

**"Services"** means all supervision, labor, materials, equipment, supplies, Sub-Contractors, and incidental expenses required by the Proposer to execute and complete the requirements of the Services outlined in the Contract Documents, including those prescribed or implied.

**"Sub-Contractor"** means an entity having a direct Contract with the Successful Proposer or with any other Sub-Contractor of the Successful Proposer who will provide product(s) or Services(s) for the performance of a part of the Services required under the Contract Documents under the sole control and direction of the Contractor.

**"Successful Proposer"** means the Proposer who the County awards an agreement to based on County's evaluation of the Proposers' qualifications, Proposals and pricing as hereinafter provided.

**"Timeline"** means the list of critical dates and actions involved in the Request for Proposals.

**"WTP"** means Water Treatment Plant.

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**SECTION III**  
**REQUEST FOR PROPOSALS**  
**FOR**  
**DESIGN-BUILD OF LOCKHART WATER TREATMENT PLANT EXPANSION PROJECT**  
**RFP No. 21-R00077/PH**

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**SECTION 1: GENERAL INFORMATION**

- 1.1 **General:** This RFP is the second step in the two-step procurement process for the Project. This RFP incorporates the terms, definitions, and schedules set forth in the RFQ and any Addenda issued thereto; however, to the extent that the RFP conflicts with the RFQ No. 21-R00076/PH and any Addenda thereto, the RFP shall prevail and shall be considered an Addendum to previously published information. Proposers must submit their Proposals pursuant to the schedule set forth in this RFP. This RFP is not an offer to enter into a contract but is merely a solicitation of entities interested in submitting a Proposal to the County for the Project.
- 1.2 **Design Criteria Package:**
- 1.2.1 Attachment A to this RFP is the Design Criteria Package (DCP). The DCP describes the Project scope and contains the County's Project goals and objectives as well as the performance criteria for the Project. The DCP will become part of the Basis of Design Documents, which is defined in Section 1.2.2 of the DBIA Standard Form of General Conditions of Contract Between the County and Design-Builder. All submittals from Proposers must be consistent with and designed to achieve the goals and objectives set forth in the DCP.
- 1.2.2 Proposers shall be entitled to reasonably rely on the accuracy of the information represented in the design or prescriptive specifications set forth in the RFP and their compatibility with other information set forth in DCP for the purposes of developing the Proposer's Technical and Price Proposals. However, the selected Design-Builder will be required to perform an independent evaluation of all information provided by the County, including but not limited to such design or prescriptive specifications to validate the information provided by the County. Further, regardless of the inclusion of design or prescriptive specifications, the selected Design-Builder shall remain responsible for meeting the performance requirements of the Project, including but not limited to the requirements that the Project meet the Basis of Design Documents as well as all applicable Legal Requirements. Provided the selected Design-Builder complies with all requirements set forth in the Contract, including but not limited to those regarding notice of claims to the County and identification of differing site conditions, and only to the extent that the Contract allows the selected Design-Builder to an adjustment in the Contract Price and Project Schedule, the selected Design-Builder will be entitled to an adjustment in the Contract Price and Project Schedule. Such adjustment shall be limited to the extent Design-Builder's actual documented costs or the critical path of the Project Schedule have been adversely impacted by materially inaccurate design or prescriptive specifications that are inconsistent with meeting the Project's performance requirements.
- 1.2.3 The County assumes no responsibility for conclusions or interpretations made by the Proposer based on the information provided by the County. Oral statements made by the County representatives are not binding on the County unless the County confirms the statements and changes by written Addendum to the RFP. In the event of a conflict between codes, industry standards and the DCP, the most stringent requirements shall apply and Proposers shall submit their Proposals based on the most stringent requirements.
- 1.3 **Contract Documents:** Attachment B to this RFP is the proposed form of Contract between the County and Design-Builder. The Contract includes the following documents:

- 1.3.1 DBIA Document 530, Standard Form of Agreement Between County and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price
- 1.3.2 DBIA Document 535, Standard Form of General Conditions of Contract Between County and Design-Builder

2. **RFP PROCUREMENT PROCESS:** To be responsive to the RFP, Proposers must submit responsive Proposals and participate fully in the following RFP Procurement Process.

**2.1 Proposal Schedule**

The following is the anticipated scheduled calendar of events with important dates and times. Dates are subject to change by the Procurement Officer or designee, at their sole discretion. If it is determined that it is necessary to change these dates/times prior to the Proposal due date, the change will be announced via an Addendum.

Action:	Date:
RFP Released	11/17/21
Mandatory Pre-Proposal Meeting & Site Walk-Through	TBD if necessary
Cut-off date for Questions by Proposers	1/18/22
Proposal Due Date and Time	2/23/22 @ 3:00 pm
Ranking of Proposals by PSRC	3/21/22 (week of)
Initial Negotiation Meeting (Draft Scope due)	4/11/22 (week of)
Final Scope and Fee Agreement	5/02/22 (week of)
Approval of Contract by Board of County Commissioners	6/14/22
Notice to Proceed (NTP)	6/15/22
Complete Design & Permitting	Within 120 days of NTP
Substantial Completion	Within 410 days of NTP
Final Completion	Within 440 days of NTP

**2.2 Site Walk-Through – TBD, if necessary**

- 2.2.1 The Site Walk-Through will be held immediately following the *pre-proposal meeting at TBD, if necessary*, at Lockhart WTP located at 5427 Lockhart Road, Brooksville, FL 34602.
- 2.2.2 The Site Walk-Through is mandatory.
- 2.2.3 Proposer will have an opportunity to view the following aspects of the Project during the Site Walk-Through.
  - 2.2.3.1 Site access road.
  - 2.2.3.2 Existing well sites No. 1 and 2 with associated building and equipment.
  - 2.2.3.3 Proposed Well No. 3 site.
  - 2.2.3.4 Proposed raw water main ROW corridor.
  - 2.2.3.5 Proposed HSP and GST site.
  - 2.2.3.6 Surrounding topography and environmental constraints within the project site.
  - 2.2.3.7 Access to the site and gather information on existing equipment and site conditions to develop a fee estimate and plan for the proposed improvements.
  - 2.2.3.8 Identify potential staging areas onsite.

2.2.3.9 Identify potential environmental concerns onsite.

2.2.4 Proposers may have up to four (4) people at the Site Walk-Through.

2.2.5 Proposers must bring and be able to present the following set forth herein prior to attending the Site Walk-Through:

- Driver's License.
- Company identification such as business card.
- Personal Protective Equipment (PPE) consisting of a hard hat, safety shoes, safety glasses, reflective vest, and hearing protection.

2.2.6 Proposers may ask questions during the Site Walk-Through; however, Proposers may not rely on any information provided orally during the Site Walk-Through unless such information is provided in writing as an Addendum to this RFP.

### 2.3 Proposed Changes in the Design-Build Contract Documents

2.3.1 Submission of a Proposal pursuant to this procurement is a representation by the Proposer that it has reviewed the Contract Documents, including but not limited to the DCP, and the Proposer is willing to perform the Work set forth in the DCP for the terms set forth in the Contract Documents.

2.3.2 Prior to the Question cut-off date set forth in the schedule, Proposers may propose changes to the Contract Documents, including but not limited to the insurance requirements, bonding requirements, Design-Build Contract, and the General Terms and Conditions. The County's goals in requesting such proposed changes are: i) to discover provisions in the Contract Documents that unnecessarily increase the cost of the Project or complicate the performance of the Work, and ii) to identify Contract provisions and commercial terms the Design-Builder intends to negotiate if selected. Therefore, with every proposed change, Proposers must include the following information:

2.3.2.1 The document and section number.

2.3.2.2 Proposed alternate language.

2.3.2.3 An explanation for the requested change.

2.3.2.4 Any impact the requested change has on any commercial term in the Contract Documents or DCP.

2.3.3 The County may change the Contract documents in an Addendum if deemed necessary. The County reserves the right to reject any and all proposed changes and to accept any proposed change to the Contract Documents via Addendum to the RFP. The County also reserves the right to negotiate such provisions with the selected Proposer.

**2.4 Technical Proposal:** Proposers shall submit the Technical Proposal pursuant to the instructions set forth herein at or before the time set forth in the schedule. Proposers are encouraged to focus on the concerns of the County as set forth below in submitting their Proposal. Attachment C to this RFP is the Proposal Form which shall be submitted as part of the technical proposal package discussed within the RFP.

### 2.5 Price Proposal:

2.5.1 Proposers will submit Price Proposals pursuant to the Proposal Schedule and pursuant to the following instructions: Price Proposals shall be based on the RFP and Contract Documents as amended by Addenda. The prices submitted in the Price Proposals will be inserted into the appropriate sections of the Design-Build Agreement with the selected Proposer. Proposers shall



keep their Price Proposals open for one hundred eighty (180) days after submission of their Price Proposal. Proposers shall be entitled to rely on the written information provided by the County in the RFP and any Addenda in developing their Price Proposal; however, the selected Design-Builder will be required to validate all Project information as set forth in the Contract Documents. By submitting a Price Proposal, the Proposer represents and warrants that it will enter into the Agreement set forth in Attachment B for the amount set forth in the Price Proposal, subject only to changes as allowed under the Agreement.

- 2.5.2 The Proposer has carefully examined the RFP and the DCP and ascertained the nature, scope, and location of the Work. The Proposer has investigated and assured itself as to the general and local conditions that can affect the Work or its cost, all geotechnical and existing site conditions data, and any and all Plans, Specifications, Addenda, and Contract forms. The submittal of the Technical and Price Proposals shall be conclusive evidence that the Proposer has made such examinations and understands all the requirements for the performance of the completed Work. Failure of the Proposer to take these actions will not relieve it of responsibility for properly estimating the difficulty and cost of successfully completing the Work, or for proceeding to successfully complete the Work without additional cost to the County. The Proposer shall determine the methods, materials, labor, and equipment required to perform the completed Work and shall reflect their cost in the Price Proposal.

## 2.6 Selection of Preferred Proposer:

- 2.6.1 The County will evaluate each Proposer pursuant to the selection criteria and weights established herein. The County will determine the Preferred Proposer and notify all Proposers in writing of its determination. The "Preferred Proposer" is the Proposer that the County determines achieves the apparent best overall ranking.
- 2.6.2 At the County's discretion, the County will initiate negotiations with the Preferred Proposer. If the County cannot reach an agreement with the Preferred Proposer, the County shall cease negotiations with the Preferred Proposer and provided that such negotiations are terminated in writing, shall initiate negotiations with the next Preferred Proposer. The County shall continue with this process with each such Proposer until it reaches an agreement or cancels the procurement. Negotiations are at the County's sole discretion. Proposers should not anticipate that any portion of the proposed Contract will be changed or modified. By submitting a Proposal pursuant to the RFP, the Proposer represents and warrants that it will enter into the contract provided by the County subject to the terms set forth in its Proposal.
- 2.6.3 Proposers should not anticipate that any portion of the proposed Contract will be changed or modified. By submitting a Proposal pursuant to the RFP, the Proposer represents and warrants that it will enter into the Contract set forth in Attachment B, subject to the terms set forth in its Proposal.

**2.7 Selection De-Briefing:** Not later than thirty (30) days after Board approval of a selection or shortlist, a Proposer may submit a written request to the applicable Contract administrator or purchasing agent for a debriefing on the evaluation of their Proposal. The purchasing agent will schedule a meeting with the Proposer for the debriefing. However, at the Proposer's request, the debriefing may be conducted via telephone conference or the Proposer may request a copy of the digital recording of the selection on CD for \$15.00 fee. Proposers may request a debriefing from the County with respect to the Procurement; however, County shall conduct no such debriefings until it has either reached an agreement on the Project or canceled the Procurement. The debriefing shall include the following minimum information:

- 2.7.1 Key requirements of solicitation.
- 2.7.2 The overall ranking of all Proposals.
- 2.7.3 The significant weaknesses or deficiencies in the Proposal in response to the requirements of the solicitation.
- 2.7.4 If requested, an explanation of the score received for each evaluation criteria will be provided, including costs, if applicable.
- 2.7.5 If applicable, a summary of the rationale for award.

2.7.6 Responses to any relevant questions of the Proposer.

### 3. **DOCUMENTATION REQUIREMENTS**

#### 3.1 **Submittal Process:**

3.1.1 Proposers must submit all Proposals by mailing or delivering one (1) original signed document, four (4) copies, and one (1) CD or flash drive to:

***Toni Brady, Chief Procurement Officer***  
**PURCHASING AND CONTRACTS DEPARTMENT**  
**15470 FLIGHT PATH DRIVE**  
**BROOKSVILLE, FLORIDA 34604**

3.1.1.1 “Sealed Proposals for “RFP No. 21-R00077/PH – Design-Build of Lockhart Water Treatment Plant Expansion Project.” The submittal shall be sealed and include on the outside of the sealed envelope the Request for Proposal number, Date Proposal is Due, and Name of Proposer.

3.1.1.2 The County will stamp the submittals with a date and time stamp to record timeliness.

3.1.1.3 Proposers are responsible for ensuring timely delivery of submittals. The County is not responsible for late submittals.

3.1.1.4 Late submittals will not be evaluated.

#### 3.2 **Submittal Format Requirements:**

3.2.1 All submittals shall comply with the following format requirements:

3.2.2 Organized in accordance with the RFP.

3.2.3 When printed, shall be limited to the page limitation set forth in the instructions for each section.

3.2.3.1 The **only** documentation that is **not** included in the page count is the following:

3.2.3.1.1 Cover Letter.

3.2.3.1.2 Appendices (provided that each Appendix meet the page count set forth in the requirement for the Appendix).

3.2.3.1.3 Table of contents or tabs will not be counted against the page count as long as these items are used exclusively for organization and contain no substantive written or graphic content.

3.2.3.1.4 Engineering plan sheets will not be included in the twenty (20) page limit.

3.2.3.2 In the event that the page limit is exceeded, the County, at its sole discretion, reserves the right to remove pages from the sections of any non-conforming submittals to bring each non-conforming submittal within the page count requirement.

3.2.3.3 A “page” shall be defined as one single-sided piece of paper that has words, charts, tables, pictures, or graphics. A Proposal should not exceed twenty (20) total pages (most or all 8.5” x 11”), excluding the plan sheets, which may be presented in 11” x 17” paper; however, larger pages may only contain graphics and/or designs and may not be used for a Proposer’s narrative. A Proposal can exclude resumes, experiences and other items that were included in the RFQ.

3.2.3.4 The font on any portion of the submittal, including graphics, should be no smaller than 10 point.

3.3 **Cover Letter:** Proposers must include a cover letter that includes the following: (1) name, address, telephone

number, and e-mail address for each Proposed Design-Build Team Member that has been added to the Proposed Design-Build Team since submission of the RFQ and (2) any requested changes to the Proposed Design-Build Team since submission of the RFQ. Note that changes to the Proposed Design-Build Team continue to be subject to the RFQ, and Proposers should include an explanation justifying the changes to the Proposed Design-Build Team. The cover letter shall be a maximum of one (1) page.

**3.4. Technical Proposal:** The Technical Proposal may not be longer than twenty (20) pages excluding the plan sheets. Proposers should focus their discussions in the Technical Proposal on their approach to the Project.

**3.4.1 Overall Management Approach**

3.4.1.1 Describe the Proposer's overall management approach to the Project. In responding to this evaluation factor, Proposers should address the following:

3.4.1.1.1 What strategies will the Proposed Design-Build Team employ to achieve a thorough and clear understanding of the County's goals and objectives?

3.4.1.1.2 Based on the information provided in the RFQ and RFP, what is the Proposed Design-Build Team's current understanding of the goals and objectives of this Project?

3.4.1.1.3 Identify one (1) to three (3) key challenges to the Project, and for each challenge identified,

3.4.1.1.1.1 Propose a strategy to mitigate the potential negative impacts of the challenge.

3.4.1.1.1.2 Identify any unique approaches, strengths, and/or differentiating resources (including specific Key Team Members) that will assist the Proposed Design-Build Team to implement the strategy and assist the County in achieving its goals.

**3.4.2 Sub-Contractor Procurement Approach:** The County recognizes the importance of the entire design-build team, including specialty design-build Sub-Contractors. For those Sub-Contractors and Sub-Consultants not proposed as part of the Design-Build Team:

3.4.2.1 Describe the Design-Build Team's overall approach to Sub-Contractor and Sub-Consultant procurement for the Project.

3.4.2.2 Identify the challenges in the selection of Sub-Contractors and Sub-Consultants for the Project and how the Design-Build Team will address those challenges.

3.4.2.3 If applicable, describe in detail the Design-Build Team's approach to early Sub-Contractor involvement, including proposed design-build and design-assist Sub-Contractors, and identify which scopes of Work are candidates for design-build or design-assist Sub-Contracts.

**3.4.3 Quality Assurance/Quality Control ("QA/QC").** Provide the following information regarding the Proposed Design-Build Team's approach on QA/QC. Include the following information:

3.4.3.1 The overall approach to both design and construction QA/QC;

3.4.3.2 The Proposed Design-Build Team's processes and tools to facilitate QA/QC; and

3.4.3.3 The reporting and functional relationship(s) between the Quality Management personnel and the Proposed Design-Build Team as a whole.

**3.4.4** Describe the Design-Build Team's commitment to safety and what innovations the Team will bring to the Project to enhance safety.

**3.4.5** The information provided in response to this Section of the RFP will be scored based on the following:

3.4.5.1 The Proposed Design-Build Team's understanding of the delivery method;

3.4.5.2 The degree to which the Proposed Design-Build Team understands the County's goals and objectives with respect to the Project; and

- 3.4.5.3 The strength of the Proposed Design-Build Team’s management plan for the Project, including not only the specific topics and specialized components outlined in the RFP but also any other component or element that the Proposed Design-Build Team deems essential to the success of the Project.

### 3.5 Project Controls and Cost Tracking:

- 3.5.1 Describe the Design-Builder’s processes and tools for monitoring, reporting, and managing cost, including but not limited to:
  - 3.5.1.1 Design to budget control and reporting processes.
  - 3.5.1.2 Scope, cost, and schedule baseline development and management/change control processes and the participation and interaction among the scheduling and estimating teams, project, design, construction, and operations management teams to execute these processes.
  - 3.5.1.3 Risk management processes and how quantified risk cost and schedule values are factored into the cost and schedule baseline, projected cost and schedule performance, and cash flow reporting.
  - 3.5.1.4 Cash flow reporting processes and basis for monthly cash flow estimated values.
  - 3.5.1.5 Process to plan, track, cash flow, and correctly bill.
  - 3.5.1.6 Document control system integration with work breakdown structure and responsibility assignment matrix or organizational structure.
- 3.5.2 What are the primary challenges with respect to project controls and how will those challenges be met?
- 3.5.3 The information provided in response to this Section of the RFP will be evaluated based on the following considerations:
  - 3.5.3.1 The robust nature of the Proposed Design-Build Team’s plan for tracking and measuring the metrics for the Project, including but not limited to costs and schedule.
  - 3.5.3.2 The Proposed Design-Build Team’s plan to collaborate in the development and communication of budget, costs, and schedule to the County.
  - 3.5.3.3 The differentiating resources that the Proposed Design-Build Team provides for the Project.

### 3.6 Collaboration and Integration: One of the primary goals for the Project is to create a highly functioning, collaborative, and integrated team as early as possible and to incorporate the County’s staff and consultants as part of that team.

- 3.6.1 Explain the Design-Build Team’s approach to creating a collaborative environment for the Project.
- 3.6.2 Describe how the Design-Build Team will engage the Project Stakeholders and incorporate their input into the Project.
- 3.6.3 Provide the Design-Builder’s approach to conflict resolution between the County and the Design-Builder and among members of the Design-Build Team.
- 3.6.4 The information provided in response to this Section of the RFP will be evaluated based on the following considerations:
  - 3.6.4.1 The strength and viability of the Design-Build Team’s plan to communicate and collaborate with the County, including not only the specific topics on which the County has requested discussion but any other topics that the Proposed Design-Build Team deems essential to the success of the Project;
  - 3.6.4.2 The ideas and innovations submitted by the Design-Build Team that will enhance and foster collaboration and integration; and
  - 3.6.4.3 The differentiating resources that the Design-Build Team will bring to the Project and how those differentiating resources will enhance the Project.

### 3.7 Design Development and Management: In developing the design for the Project, the Design-Builder will be responsible for design and construction of improvements to the Lockhart WTP, as described in the project

description and scope of work of the RFQ, to meet the necessary system demands and pressures required for future County developments.

- 3.7.1 Describe the Design-Build Team's overall approach to Design Excellence, design commitment, design development, and management for the Project. Include a description of the design management process and the communications between the County and the Design-Builder during this process.
- 3.7.2 Identify the challenges in developing the design for the Project and how the Design-Build Team will address those challenges.
- 3.7.3 Provide details regarding the tools used in the design process and how those tools will assist the Design-Builder in achieving those goals.
- 3.7.4 Describe the Proposed Design-Build Team's approach to value engineering for the Project.
- 3.7.5 Describe the Proposed Design-Build Team's approach to defining and obtaining design commitment.
- 3.7.6 Describe the Proposed Design-Build Team's process for managing quality assurance and quality control during the design process and identify the Key Team Members who will be tasked with the review and coordination of all phases of design documents.
- 3.7.7 Describe the Proposed Design-Build Team's approach for managing the permitting process.
- 3.7.8 The information provided in response to this Section of the RFP will be evaluated based on the following considerations:
  - 3.7.8.1. The strength and viability of the Proposed Design-Build Team's design management plan, including not only the specific topics on which the County has requested discussion but any other topics that the Proposed Design-Build Team deems essential to the success of the Project;
  - 3.7.8.2. The quality of the Proposed Design-Build Team's approach to design excellence for the Project and the ideas and innovations proposed to achieve design excellence; and
  - 3.7.8.3 The differentiating resources that the Proposed Design-Build Team will bring to the Project and how those differentiating resources will enhance the Project.

### **3.8 Project Sequencing and Scheduling:**

The construction schedule should meet the County's estimated completion date, promote efficiency, and have the least amount of impact on County operations and the Project stakeholders as possible.

- 3.8.1 Describe the Proposed Design-Build Team's overall approach to scheduling and construction sequencing for the Project. In addition to the overall approach, include a description as to how the Design-Build Team will address regulatory and stakeholder approvals for the permitting process.
- 3.8.2 Identify the challenges in scheduling the construction for the Project and how the Design-Build Team will address those challenges.
- 3.8.3 Provide details regarding the tools used in developing optimal sequencing and coordination of the Work and how those tools will assist the Design-Builder in achieving those goals including but not limited to:
  - 3.8.3.1 Meet all design requirements set forth in the DCP (County's Program)
  - 3.8.3.2 Meet all applicable federal, state, and local standards
  - 3.8.3.3 Improve Reliability
  - 3.8.3.4 Address Resiliency of System
  - 3.8.3.5 Adherence to Established Project Milestones
  - 3.8.3.6 Administration of the Consultants, Sub-Consultants, and Sub-Contractors.
- 3.8.4 Describe the assumptions under which the proposed schedule was based, including proposed durations, sequencing and logic, and skilled labor availability for determining manpower projections.
- 3.8.5 The information provided in response to this Section of the RFP will be evaluated based

on the following considerations:

- 3.8.5.1 The strength and viability of the Design-Build Team’s project sequencing and scheduling plan, including not only the specific topics on which the County has requested discussion but any other topics that the Design-Build Team deems essential to the success of the Project; and
- 3.8.5.2 The differentiating resources that the Design-Build Team will bring to the Project and how those differentiating resources will enhance the Project.

### 3.9 Proposed Design:

3.9.1 Proposers shall submit a Design Proposal that meets or exceeds the criteria set forth in the DCP and that meets the definition of Design Excellence set forth in this procurement. The Design Proposal shall be submitted as follows:

3.9.1.1 The Design Proposal shall be in the following format:

3.9.1.1.1 The plan sheets and specifications should be provided with six (6) hard copies and two (2) CD or USB flash drives.

3.9.1.2 The Design Proposal shall comply with the following limitations:

3.9.1.2.1 The hard copies of drawings must be on 11”x17” paper and the specifications and Preliminary Design Report on 8.5”x 11” paper with minimum font 10.

3.9.2 The Proposed Design should be developed to the 30% design phase in a Preliminary Design Report format and specifically include the following elements:

3.9.2.1 Site plan with all existing, demolition and proposed units and piping system

3.9.2.2 Process flow diagram with pump, pipe and valve sizes

3.9.2.3 Water Treatment Plant P&ID with all instruments and controls

3.9.2.4 Plan view of the HSPS building with layout of equipment in the rooms

3.9.2.5 Design information and cut sheets for high service pumps, well pump and hypochlorite storage and feed pumps

3.9.2.6 Schedule for design, permitting, and construction

3.9.3 The County, in its sole discretion, will determine whether the Proposed Design:

3.9.3.1 Meets the County’s goals and objectives and is consistent with the DCP.

3.9.3.2 Describes an achievable strategy to meet the County’s Budget and Schedule.

3.10 **Evaluation Criteria:** For the evaluation and selection of Design-Build Firms during this phase, a rating system will be utilized by the County’s PSRC to score and rank each proposal as described in this Request for Proposals. The scoring criteria for this process will be as follows:

Criteria	Maximum Points
1. Approach to Project	40 Points
2. Technical Information and Drawings	20 Points
3. Guaranteed Maximum Price	40 Points

TOTAL POSSIBLE POINTS 100 Points

### 4. **ATTACHMENTS TO THIS RFP:**

Attachment A:	Design Criteria Package (DCP)
Attachment B:	Proposed Contract Documents
Attachment C:	Proposal Form
Attachment D:	Insurance Requirements

**ATTACHMENT A**

**Design Criteria Package**

The Design Criteria Package (DCP) shall be reviewed in full by the Design-Builder and is comprised of the following documents:

<b><u>SECTION</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>PAGES</u></b>
I.	Design Criteria Package Report	9
II.	Operational Preferences	3
III.	Lockhart WTP DCP Drawings	6

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**DESIGN CRITERIA PACKAGE**  
**Design-Build of Lockhart Water Treatment Plant Expansion Project**  
**Solicitation Number: 21-R00077/PH**

**1. Introduction:**

The Design Criteria Package (DCP) outlines performance requirements to successfully complete this critical project for Hernando County. In addition to cost and schedule, success factors include minimizing impacts to the community and enhancing safety. The Design-Builder shall consider these critical elements, in addition to system performance requirements, to ensure project success. The purpose of the DCP is to furnish sufficient information to allow design-build firms to prepare a response to this Request for Proposal (RFP) pursuant to Florida Statute Chapter 287.055 (Current Edition).

The Design Criteria Professional for this project is McKim & Creed excluding them from participating as a member on any Design-Build Team due to their involvement in the development of the DCP. No other firms are to be excluded.

The intent of this DCP is to provide performance-based criteria for the use in developing the basis of design for this project.

**1.1 Schedule:**

The following schedule is anticipated for the project:

- Notice to Proceed – 30 days from Notice of Intended Award
- Substantial Completion – 410 days from Notice to Proceed
- Final Completion – 440 days from Notice to Proceed

**1.2 Funding:**

This project consists of one Capital improvement Project (CIP): No. 101010 Lockhart Road Water Treatment Plant. Design-Builder shall track work performed on CIP No. 101010 and provide supporting documentation on applications for payment, including design and construction efforts.

**1.3 Background Documents:**

The reference documents compiled by the Design Criteria Professional can be found on the File Transfer Protocol (FTP) site. The documents were reviewed and/or developed solely to determine the feasibility of the project. The Design-Builder shall be responsible for developing the basis of design and verifying the accuracy of all information presented on the FTP site.

**1.3.1 Existing Conditions:**

The Lockhart WTP site currently has two fenced well sites including Well No. 1 and Well No. 2 (by others). The existing Well No. 1 site contains the well, well pumps, pneumatic water tank, communications antenna, propane storage tank for Well No. 1's backup generator, and road access. The Lockhart WTP site comprises approximately 4.7 acres of largely unwooded, open space. The proposed Well No. 2 site is located on an unwooded plot of land with minimal slope in the area Southwest of Well No. 1 on the Lockhart WTP site and does not have road access. The areas surrounding existing Well No. 1 and Well No. 2 are predominantly open space with some business and residential properties. Proposed Well No. 3 located south of Lockhart WTP is expected to include a drilled, tested, screened and cased/grouted well by the Notice to Proceed. It is anticipated that gopher tortoises may be present onsite and will require relocation. For this reason, an allowance shall be provided in the proposed design to identify and relocate gopher tortoises should they be present.

**1.4 Overview:**

Hernando County is moving towards developing larger, regional water treatment facilities to meet the needs of new developments throughout the County. One of these new developments is being built near the Lockhart Water Treatment Plant. It is the County's intent to expand the Lockhart Water Treatment Plant into a regional facility to meet future growth needs.

Currently, the Lockhart Water Treatment Plant (WTP) does not meet anticipated fire flow demands south of the facility where a new planned community is scheduled to be developed. This development location has a higher elevation than the system to the north which creates a pressure differential within the existing system between



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the north and south service areas causing a flow reduction to the south service area. For this reason, a new High Service Pump Station (HSPS) is required to meet the south distribution demands along with three (3) Pressure Sustaining Valves (PSV) to be installed by Others to create pressure zones in the distribution system. At least one (1) PSV will likely be within this project area. Two (2) existing wells (Well No. 1 and Well No. 2) and one (1) proposed well (Well No. 3) will pump to a new 2 million gallon (MG) pre-stressed concrete Ground Storage Tank (GST) to supply flow to the HSPS. It will be important to note that the proposed site layout shall include plans for a future, second 2 MG GST.

**1.4.1 Proposed Improvements:**

The anticipated scope of work includes the following services, but is not necessarily limited to:

- Subsurface utility engineering
- Geotechnical engineering and testing
- Surveying
- Permitting
- Design and construction of:
  - New 2 MG pre-stressed concrete GST
  - New HSPS
  - New standby power system with whole-plant capacity at the Lockhart WTP site
  - New sodium hypochlorite injection, mixing, instrumentation, storage and controls
  - New electrical room for WTP electrical gear and control systems
  - New building for HSPS, chemical feed/storage system, and electrical room
  - New Well No. 3 well pump and associated well piping, electrical, instrumentation, on-site standby power generator, and controls, communications, and appurtenances (Trilby Crossings South of Well No. 1 and Well No. 2)
  - New raw water pipeline from the proposed Trilby Crossing wellhead to the Lockhart WTP proposed GST
  - Connect potable water main from Lockhart WTP to existing 16" potable water main (by others)
  - SCADA programming and integration for wellfield, chlorination system and HSPS operations
  - Stormwater system
  - New perimeter security fencing
- Rehabilitation of existing equipment:
  - Well No. 1
    - Remove and dispose of existing generator, piping, and appurtenances
    - Remove and dispose of existing hydro-pneumatics tank, piping, and appurtenances
    - Remove and dispose of existing liquid propane gas storage tank, piping, and appurtenances
    - Paint existing above grade pipe outside of well house
  - Well No. 2 (by Others)
    - Disconnect and prepare existing portable generator for delivery to County
    - Remove and dispose of existing security fence

**1.4.2 Performance Objectives:**

Successful completion of the project includes adherence to the following performance objectives:

- Improve full water distribution system coverage
- Adherence to established project milestones and budgets
- Minimize impact to surrounding businesses and residents
- Meet established design criteria

**1.4.3 Design Criteria:**

Provide the County preferred equipment, instrumentation and services as presented on the FTP site documents for all prescribed design criteria.

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**1.4.3.1 Well System:**

Proposed Well No. 3 is expected to be drilled, tested, screened and cased/grouted prior to the Notice to Proceed for construction of this project. The Design-Builder shall complete and connect the proposed Well No. 3 to the Lockhart Water Treatment Plant; including any testing, well house, well pump, well head system, site fencing, on-site emergency power generator, raw water line connections, control panels, electric service, standby generation, connection to the plant SCADA system, piping system from the well to the Lockhart WTP, and any other accessories needed for full operation of the proposed Well No. 3. Well house shall include well head, control panels, and standby generator. For reference, the following is a list of the well flow rates:

- Existing Well No.1 – 700 gpm
- Existing Well No. 2 (by others) – 600 gpm
- Proposed Well No. 3 – 600 gpm (projected)

Existing Well No. 2 (by others) is a rehabilitated well at the Lockhart WTP site which currently does not produce flow. Future improvements have been designed and constructed by others. The design and construction of Well No. 2 is not within the scope of services outlined within the DCP. The Design-Builder shall protect the Well No. 2 site and its related appurtenances throughout the construction services for this project.

**1.4.3.2 Ground Storage Tank:**

Provide one (1) new 2 MG pre-stressed concrete ground storage tank (GST), yard piping, drains, sensing lines and valves with the following minimum requirements:

- GST includes, but may not be limited to: roof, fans, vents, drains, overflows, aluminum safety railings, aluminum hatches, manways, access ladders, sensing lines, high water alarm, coatings, all concrete work, earthwork, pipe, valves, site dewatering, and other appurtenances as required. Interior paint coating on GST from two (2) feet below the low water line up to the top. All exterior ladders and platforms shall use aluminum and/or 316 stainless steel with hardware designed to prevent corrosion. Interior ladders shall be fiberglass and shall use either aluminum or 316 stainless steel hardware.
- New tank drain(s) yard piping, valving, and connections to accommodate the GST
- Positive drainage to the site stormwater management. The overflow discharge structure shall exit the ground a minimum of twenty (20) ft from the tank and shall be diverted to the storm catch basin
- Provide a minimum of twenty (20) foot of clearance around the GST
- Provide a four (4) foot gravel apron around the GST

**1.4.3.3 High Service Pump Station (HSPS) Building:**

Provide a HSPS Building that is a painted block building with seam metal roofing to accommodate the following features with separate rooms and their requirements:

- All lighting, internal and external (including emergency lighting)
- Smoke and fire protection systems
- Building ventilation system and building insulation. Conform to Florida Building and Energy Code
- Lightning protection by a certified Lightning System Contractor
- HSPS room with:
  - Bridge crane system
  - One (1) 8 ft roll up door and one (1) entry door for equipment and personnel access
- Electrical room with:
  - Independent HVAC system
  - One (1) double door for equipment access from outside. Separate internal access into pump station building
- Hypochlorite solution storage and feeding system room with:

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- One (1) 8' roll up door and an entry door for equipment and personnel access
- All equipment and building materials shall be corrosion resistant

Design-Builder shall comply with all Federal, State, and Local building health and safety regulations.

**1.4.3.4 High Service Pump System:**

Provide a HSPS to meet the following requirements:

- Existing Average Day Flow
  - Primary Pump Operation: 650 gpm
  - Head: 75 ft
- Existing Average Daily Flow with Fire Flow Condition
  - Secondary Pump Operation: 1,300 gpm
  - Head: 86 ft
- Existing Peak Hourly Flow with Fire Flow Condition
  - Demand: 1,538 gpm
  - Head: 101 ft
- Future Peak Hourly Flow with Fire Flow Condition
  - Demand: 4,540 gpm
  - Head: 141 ft

**1.4.3.5 Sodium Hypochlorite Storage System:**

Provide a sodium hypochlorite storage system with a double wall polyethylene storage tank and a minimum of one (1) day-tank with provisions for two future equally sized storage tanks. Each tank shall store 30 days of sufficient 12.5% hypochlorite solution to produce a chlorine residual of 1.0 mg/l for the treated water leaving the GSTs and at the present average daily flow. The hypochlorite feeding system shall consist of sufficient installed sodium hypochlorite solution feed pumps and HMI controls to feed a conceptual dosage of up to 5.0 mg/l for total combined flow rate of three wells and up to 100 psi pressure with one standby and provisions for two (2) future feed pumps/controls with PVC backer board, hangars, valves, piping, injection, controls, fire extinguisher(s), containment, safety signage, eyewash, hose bib, etc., for the continuous disinfection of the drinking water and pre-chlorination prior to GST, discharge header of high service pumps or other appropriate treatment of the water as necessary. The room should have a dedicated HVAC system for climate control and exhaust fan(s). The interior walls shall be coated with a chlorine resistant coating. The entry and roll up doors shall be equipped with aluminum or 316 stainless-steel hardware. The hypochlorite vapor piping shall be equipped with a pressure relief valve and should be vented out at approximately 2' above the roof-line. Flow meters and hypochlorite injection points shall be installed on piping above grade.

**1.4.3.6 Electrical Distribution Equipment:**

Design-Builder is to provide the following:

Coordinate with Power Utility to provide sufficient power service to site, provide all utility easements and necessary survey for documentation, and coordinate with County for final documentation.

Electrical Distribution and Control System:

- Main power service, power distribution gear, Automatic Transfer Switch (ATS), motor control center (MCC), and variable frequency drives (VFDs)
- Duct banks, Sch 40 PVC shall be concrete capped (4" min with 24" burial depth and metal indicating tape @ 12" depth). Duct banks crossing roads shall be steel reinforced. Provide one spare of largest size conduit between pull boxes
- Exposed conduit in corrosive areas shall be PVC schedule 80. Exposed conduit in Wet or Indoor areas shall be aluminum. Provide conduit curbs for conduit stub-ups. Transition from

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- PVC to aluminum underground with PVC Coated Aluminum elbows
- VFD's shall have at a minimum tuned passive filtration to comply to IEEE 519 at Point of Common Coupling (PCC). Provide Harmonic Calculation for record
- Provide Coordination and Arc Flash study, with labels, for all electrical equipment to 208V panel distribution level
- Provide Type 1 & 2 surge protection with counters and fail indication alarms on all power distribution equipment including distribution panels
- Provide 3-Phase Power
- Install new grounding system for entire plant, ground resistance shall not be greater than 5-ohms to any ground bus of equipment
- All lighting shall be LED
- Provide separate lightning protection system by a certified (UL or LPI) lightning protection contractor with separate grounding but bonding also to new plant ground system. Provide separate lightning alarm system with remote monitoring
- Programmable Logic Controller (PLC) and Human Machine Interface (HMI) display in enclosure to provide remote control using the County's Data Flow System (DFS) and local control using an Operator Interface, including Uninterruptable Power Supply (UPS) and six 1" spare conduits terminated outside in 24"x24" pull box for future use
- Provide a single-mode fiber optic cable from Well No. 3 to the main WTP. Install the cable in conduit within the same trench as the raw water main
- Provide single-mode to multi-mode fiber optic cable converters to facilitate connection to the DFS system
- Provide a DFS system at Well No. 3 to read the flow meter and other instrumentation
- All analog signals shall be 4-20mA
- Provide alarms for all hatches on new GST, pump/ electrical/chemical room doors, to terminate in terminal box with terminal blocks. Provide and connect to security alarm system able to dial out or connect to DFS remote telemetry panel

**1.4.3.7 Standby Power System:**

Remove the existing standby generator at the WTP and dispose. Provide a new standby generator (with a minimum of 72 hours fuel storage at 100% plant operation), including a double wall diesel fuel belly tank which complies with all FDEP and NFPA regulations. Generator to be sized for entire plant operation including high service pumps, hypochlorite solution system, HVAC, electrical equipment/panel(s), and lighting. Fuel storage tank(s) shall have a capacity of less than or equal to 550 gallons. If a second fuel storage tank is required to meet the 72 hours of fuel storage, an adjacent fuel storage tank of equal capacity shall be added with separate containment, pump(s), and valves with flow into first tank. Per FDEP, standby power shall provide sufficient power to maintain average daily and fire flows. Provide aluminum, sound annotation enclosure 73dBA @ 23', (minimum), hurricane rated per Florida Building Code (FBC). Permanent aluminum enclosure platforms for maintenance must be provided.

Provide an on-site emergency generator at the proposed Well No. 3 with double wall diesel fuel belly tank for 72-hour diesel fuel storage of adequate size to run the on-site Well Pump No. 3 and local electrical equipment/panel(s). Provide generator in a separate aluminum, sound attenuation enclosure (73dBA @ 23', minimum), hurricane rated per Florida Building Code (FBC). Permanent aluminum enclosure platforms for maintenance must be provided.

**1.4.3.8 General Items:**

- Provide site lighting for all roads, sidewalks and building perimeters. Lighting shall be "Dark Sky" compliant, LED fixtures. Provide roadway lumens per FDOT for road type. Minimum 1-foot candle on walkways
- All interior lighting shall be LED, minimum lighting level 20' candles @ 3' AFF. Provide occupancy sensing with override
- All buildings to have Lockhart WTP specific master key access
- All building doors to have push bars
- Provide access road, sidewalks, grading and seeding and perimeter security fencing,

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- manual access gate and security system
- Provide all hatches, vents or other openings with gaskets or screens using 24x24 mesh where required
- Provide connection to existing 16" potable water main
- Provide a new 2" plant water service with backflow preventer and flow meter that includes chemical room wash down and eyewash, hose bibs, Cl2 and pH analyzers, water supply at each on-site well, building water, and yard piping for plant water usage and washdown. Above grade piping shall use stainless steel with frost protection and below grade shall use C900 pressure-rated PVC
- Provide sample points at various locations such as the GST and HSPS discharge line
- Provide controls for high service pumps, wells, remote off-site wells, and alarm
- Provide stormwater system
- Remove and dispose of the existing 30,000-gallon hydro-pneumatic tank system, controls, concrete tank pedestals, supports, connections, air lines to the air compressor, valves, and yard piping associated with the pressure tank
- Remove and dispose of existing generator, piping, and appurtenances for Well No. 1
- Remove and dispose of existing hydro-pneumatics tank, piping, and appurtenances For Well No. 1
- Remove and dispose existing liquid propane gas storage tank, piping, and appurtenances for Well No. 1
- Paint the above grade piping outside of the Wells No. 1 and 3 well houses
- Remove and dispose of the existing security fence for Well No. 2 (by others)
- Provide asphalt access drive extension from existing site drive to proposed HSPS building with truck turnaround for a 6-ton truck

**1.4.4 Project Restrictions:**

The following shall be considered by Design-Builder when developing the proposed GMP and schedule:

**1.4.4.1 Working Hours:**

All work is to be performed during regular working hours, 7:00 A.M. and 7:00 P.M., Monday through Friday, except County holidays. The County may, on certain occasions, approve work outside of these times. Such exception(s) must be approved in writing by the County at least one (1) day in advance. Design-Builder should provide five (5) days' notice when scheduling a County employee to be available outside the normal work hours. It shall be noted that per Article 8, Section 21-136 of Hernando County's ordinances, construction activities are exempt from the established sound level limits.

**1.4.4.2 Rights-of-Way:**

County-owned rights of way and/or easements available for use on this project are presented on the FTP site documents. The Design-Builder shall be responsible for obtaining permits for use of existing public rights-of way and shall be responsible for obtaining temporary or permanent easements required to complete the project.

**1.4.4.3 Special Considerations:**

The Design-Builder shall be responsible for performing or sub-contracting an environmental survey of the site to confirm the presence of any additional environmental permitting requirements specific to the project area with special consideration given to the County identified potential for gopher tortoises at or adjacent to the project site. Additionally, Design-Builder shall be responsible for the design and permitting of required storm drainage systems for the project.

**1.4.5 Concurrent Projects:**

The following projects are currently being constructed or are anticipated to be constructed near the project area:

**DESIGN CRITERIA PACKAGE**  
**Design-Build of Lockhart Water Treatment Plant Expansion Project**  
**Solicitation Number: 21-R00077/PH**

- Construction of Trilby Crossings 400 home development near proposed Well No. 3

Design-Builder is responsible for coordinating construction activities with the above projects to minimize public impacts and to enhance safety.

**2. Permitting:**

The Design-Builder will be responsible for obtaining all permits required to allow construction of the proposed improvements for the water treatment plant. Permits for this Project may include, but may not be limited to, the following:

- FDEP Drinking Water Permits:
  - Public Drinking Water Facility Construction Permit (Form 62-555.900(1), Application for a Specific Permit to Construct PWS Components)
  - Letter of clearance to place a public drinking water facility into service (Form 62-555.900(9), Certification of Construction Completion and Request for Clearance to Place Permitted PWS Components into Operation)
- Southwest Florida Water Management District (SWFWMD) Environmental Resource Permit (ERP)
- Hernando County Building Permit
- Hernando Health Department Permit
- FDEP Fuel Tank Registry
- Right-of-Way Use Permit (if needed)
- FWC Gopher Tortoise Permit
- NPDES Permit

The Design-Builder shall also be responsible for all permits and fees for proposed construction activities, including but not limited to dewatering, and utility relocation.

**3. Design Specifications:**

All aspects of this project shall be designed and constructed in compliance with the Hernando County Water-Sewer District Utilities Standards Manual (Utilities Standards Manual), latest edition, and Utilities Standards and Procedures Ordinances.

The Design-Builder shall be responsible for all testing, including but not limited to, compaction, pressure/hydrostatic, bacteriological, flow meter functionality, etc., in accordance with general industry and County standards. Design-Builder shall analyze soil conditions, install cathodic protection as necessary, and demonstrate compatibility of proposed design with subsurface conditions.

**3.1 Reference General Industry Standards:**

The design expansion to the Lockhart Water Treatment Plant shall, at a minimum, meet the requirements of the latest edition general industry standards to include but not be limited to, the following:

- Recommended Standards for Water Works (Ten State Standards)
- AWWA Water Treatment Plant Design
- Environmental Protection Agency (EPA)
- Florida Administrative Code, as applicable
- Florida Building Code
- Florida Energy Code
- Florida Mechanical Code
- Florida Fire Safety Code
- National Fire Protection Association (NFPA) Standards (Includes NFPA 70E)
- National Electrical Code (NEC)
- National Electrical Safety Code (NESC)
- Hydraulic Institute Standards
- Hernando County Standards
- Florida Department of Business and Professional Regulations – Florida Approved Products List
- Florida Department of Environmental Protection Standards (FDEP)
- OSHA Regulations

**DESIGN CRITERIA PACKAGE**  
**Design-Build of Lockhart Water Treatment Plant Expansion Project**  
**Solicitation Number: 21-R0077/PH**

**3.2 Route:**

A conceptual route corridor is presented on the FTP site documents. It is the Design-Builder's responsibility to determine actual routes and alignments and perform subsurface utility engineering (SUE) to determine the presence and horizontal/vertical locations of exiting utilities and other conflicts.

**4. Construction and Oversight:**

The Design-Builder shall perform all construction oversight and quality assurance testing to deliver a fully operational and complete utility system. Existing utility services shall be maintained at all times. Construction management, quality control/quality assurance, and field inspection services shall be closely coordinated with County staff. County staff shall be given 24 hours advance notice prior to the Design-Builder conducting field testing services.

**5. Other Considerations:**

**5.1 Site Access and Management:**

The Design-Builder will access the site through the access road entrance at 5427 Lockhart Road, which is north of the Trilby Rd and Lockhart Rd intersection. Parking, set-up and maintenance of temporary facilities, and material/equipment laydown areas are available at the project site as presented on the FTP site documents. Any additional space required by the Design-Builder for employee parking, construction offices, or material storage at off-site locations will be the responsibility of the Design-Builder.

Access by County personnel to all areas of the facility shall be maintained at all times during construction. Particularly, safe pedestrian and vehicular access shall be provided along the area adjacent to the site entrance.

The Design-Builder shall be responsible for maintaining the construction site in a manner acceptable to the County. Site maintenance shall include at a minimum the use of dumpsters for disposal of construction debris, trash clean-up and removal, installation and maintenance of silt fence around disturbed areas, maintaining lawn areas in and around the construction zones, dust control, and staging areas. Construction material, such as concrete forms, and scaffolding shall be neatly stacked by Design-Builder when not in use. Waste shall not be buried or burned on site or disposed of into storm drains, sanitary sewer, streams, or water ways. All waste shall be removed from the site and disposed in a manner complying with local ordinance and laws. The County reserves the right to limit the movement of construction crews when an area is not acceptably cleaned and maintained.

**5.2 Maintenance of Flow Plan:**

The Design-Builder is responsible for submitting a Maintenance of Plant Operations (MOPO) plan to the County. The plan shall detail how the Design Builder will ensure existing plant operations are maintained at all times.

**5.3 Start-Up, Training and Commissioning:**

The Design-Builder is responsible for coordinating and completing the testing, check out, start-up, and commissioning of the project. The Design-Builder shall coordinate a minimum of six (6) days in advance with County operations and maintenance staff for all planned equipment shut downs, tie-ins, and start-ups to ensure existing plant operations are maintained at all times. Complete WTP shutdown is not be acceptable. The Design-Builder shall submit a detailed start-up and training plan for review and approval by the County within one-hundred-twenty (120) calendar days from construction start. The plan shall be specific to each set of equipment and shall be incorporated into the overall construction schedule. The plan shall include how the Design-Builder intends to test each piece of equipment along with its related appurtenances and demonstrate the operation and performance to the County personnel.

The Design-Builder will provide documentation, complete with names and dates, that each piece of equipment has been started and operated by a manufacturer's representative along with witnessing by the County or a designated representative.

The Design-Builder shall develop an instructional program that includes training for the new water treatment plant equipment. The Design-Builder shall assemble training materials necessary for instructions, including specific operations and maintenance data from supplied manuals. Each training session shall be video recorded

**DESIGN CRITERIA PACKAGE**  
**Design-Build of Lockhart Water Treatment Plant Expansion Project**  
**Solicitation Number: 21-R00077/PH**

for the operational staff's use. The Design-Builder shall provide training at mutually agreed times by the Design-Builder and the County.

Following successful start-up and testing of systems, the Design-Builder shall turn-over the system for operation by the County. The Design-Builder shall verify that the asset management system is updated with accurate project related data and functioning as intended for scheduled maintenance procedures.



Project: Lockhart WTP DCP Development

Project #: 01155-0015

Spreadsheet Title: Operational Preferences

By: Carl Albano, EI

Created Date: 12/21/2018

Last Updated: 10/15/2019

Note: WTP Electrical equipment identified as 3-Phase, 480V

Structure	Items	Preferred Manufacturer	Model #/ Name	Comments
Chlorine Room	Skid Pumps	ProMinent	DLTA0730NPE2000U DC130EN0	Delta Pump 7.71 GPH @102 PSI
	Chlorine Analyzer	Eagle Micro System	Mod-RP-1000	0-5 ppm Free Chlorine detection range with CPZ.1 MA5 probe
	Chlorine Tank	Submit manufacturer for County approval	Submit Model #/Name for County approval	Double walled tank to be used in Lieu of drop tank and containment area to limit quantity of unused chlorine stagnant at base of tank. Tank material to be polyethylene w/ SG > 1.4
	Tank vent piping	Submit manufacturer for County approval	Submit Model #/Name for County approval	Tank vent piping to be installed at height that is tall enough to walk under (7+)
	Interior block wall chlorine resistant coating	Submit manufacturer for County approval	Submit Model #/Name for County approval	Coated or paneled to a minimum height of 8 ft
	Doors and related hardware	Submit manufacturer for County approval	Submit Model #/Name for County approval	To be constructed from chlorine resistant materials (e.g. aluminum, stainless). There are plans where aluminum is used for doors but not for frames and hinges
	Prechlorination Piping	Submit manufacturer for County approval	Submit Model #/Name for County approval	To be above ground piping. No vaults to be used
High Service Pump Station	Pump	Patterson, Goulds, or A-C	Submit Model #/Name for County approval	To be horizontal split case
	Pump impellers	Submit manufacturer for County approval	Submit Model #/Name for County approval	To be stainless steel
	Pump lube lines	Submit manufacturer for County approval	Submit Model #/Name for County approval	To be Stainless steel
	Shaft seals	Submit manufacturer for County approval	Submit Model #/Name for County approval	To be Mechanical
	Gate Valves	Submit manufacturer for County approval	Submit Model #/Name for County approval	Operation to be Vertically oriented
	Check valves	Submit manufacturer for County approval	Submit Model #/Name for County approval	No soft close check valves to be used
	Electric Duty Master Motors	US Motors, Weg, or Reliance	Submit Model #/Name for County approval	All motors to be TEFC
	Bridge Crane	Submit manufacturer for County approval	Submit Model #/Name for County approval	N/A
Control Room	VFD	Sq D or Yaskawa	Submit Model #/Name for County approval	N/A
	Power Distribution	Sq D	Submit Model #/Name for County approval	N/A
	Transformers	Submit manufacturer for County approval	Submit Model #/Name for County approval	N/A
	Tranducers	Endress Houser	Submit Model #/Name for County approval	N/A
	Switch Gear	Sq D, Cutler Hammer, or Siemens	Submit Model #/Name for County approval	N/A

	Transfer Switch	Asco, Sq D, Cutler Hammer, or Siemens	Submit Model #/Name for County approval	N/A	
	Site Control Panel	Submit manufacturer for County approval	Submit Model #/Name for County approval	OIT. To be provide local control only	
	Interstitial leak & volume sensor panel	Solar Gauge	EFG-8000	No veeder-root or similar panels that have logging capabilities	
<b>Generator</b>	Generator	Cummins, Caterpillar, Onam, or MTU	Submit Model #/Name for County approval	To be diesel. Sized to 100% of plant operation.	
	Fuel Storage Tank	Submit manufacturer for County approval	Submit Model #/Name for County approval	540 gallon capacity tank to meet demand. If not possible, additional 540 gallon storage tank(s) will be added with separate containment and pump(s) with flow into first tank. To be sized based on 72 hr at 100% plant operation.	
<b>Ground Storage Tank</b>	GST	Submit manufacturer for County approval	Submit Model #/Name for County approval	To be prestressed concrete ground storage tank with a minimum of 20 ft flat buffer zone around tank	
<b>Well Pump House</b>	Vertical Pump	Peerless, Gould's, or Grundos	Submit Model #/Name for County approval	N/A	
	Gate Valves	Submit manufacturer for County approval	Submit Model #/Name for County approval	Operation to be vertically oriented	
	Check valves	Submit manufacturer for County approval	Submit Model #/Name for County approval	No soft close check valves to be used	
	Air Release Valves	VAL-MATIC	102ST	Including nipples and ball valve	
	Inspection Port	Submit manufacturer for County approval	Submit Model #/Name for County approval	N/A	
	Ceiling	Submit manufacturer for County approval	Submit Model #/Name for County approval	Rafter Design	
	Pressure Gauge	Submit manufacturer for County approval	Submit Model #/Name for County approval	Typ	
	Roofing	Submit manufacturer for County approval	Submit Model #/Name for County approval	Standing seam metal roof only. No shingles for the building roof	
	Roof Opening	Babcock-Davis or equiv.	36" x 36" Security Hatch	For well maintenance. No skylights, domes, or other materials that will degrade in the sun. To include venting pipe extending 2' above roof line	
		Flow Meter	McCrometer	FlowCom Register	To be used where applicable
<b>Well Telemetry System</b>	Frequency	Submit manufacturer for County approval	Submit Model #/Name for County approval	To be placed on County's existing site frequency	
	Antenna	DFS	RTA209, RTC400	Antenna w/ Coax cable	
	Back Plane	DFS	MBP001-2, MBP001-3	Internal Back Plane	
	Battery	YUASA	NP2.6	12VDC Battery w/shelf	
	Circuit Breaker	Square D	QUO110	10 Amp Circuit Breaker	
	DFS Modules		DFS	DCM003-4	Digital Control Module
			DFS	AMM002	Analog Monitor Module
			DFS	PLC001	Programmable Logic Controller
			DFS	PBC001	PLC Bypass Card
			DFS	PSM003-1	Power Supply Module
			DFS	RIM006-18	Radio Interface Module
	Enclosure	DFS	DFS-2-00280-008-04	RTU204 Stainless Steel Enclosure	
	Relay	AA Electric	AAE201, NDS-8	120V AC Octal Relay w/ base	
	Surge Protection		DFS	SPS001	AC Power Surge Protector
			DFS	TFS001	Transient Filter Shield
			Polyphaser	S-B50LN-C2	Coaxial Lightning Protector
			Edco	DRS-036	Din Rail Mount Surge Suppression
Switch	Wago	286-896	PLC Run/Debug 2 Position Switch		
Terminal Block	Wago	280-621	4 conductor Thru		
Tower Assy.	DFS/ROHN	DFS-00353-008-01	Tower Assembly 21' feet		
Pigtail	DFS	DFS-00125-008-12	Pigtail Cable 46"		
Transducer	KPSI	DFS-025-0039	Submersible Pressure Transducer, series 28		

<b>General</b>	Lighting	Submit manufacturer for County approval	Submit Model #/Name for County approval	LED. No automatic on/off switches
	Security Fence	Submit manufacturer for County approval	Submit Model #/Name for County approval	To surround entire site
	Site Access Keys	Submit manufacturer for County approval	Submit Model #/Name for County approval	To be site specific master manual keys



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NO.	DATE	DESCRIPTION

REVISIONS

NOTES:

DRAWN BY: CON  
 DESIGNED BY: KS  
 CHECKED BY: PJJ  
 DESIGN ENGINEER: KS

SCALE: AS NOTED  
 DATE: SEPTEMBER 2019  
 ACCT.#

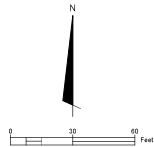
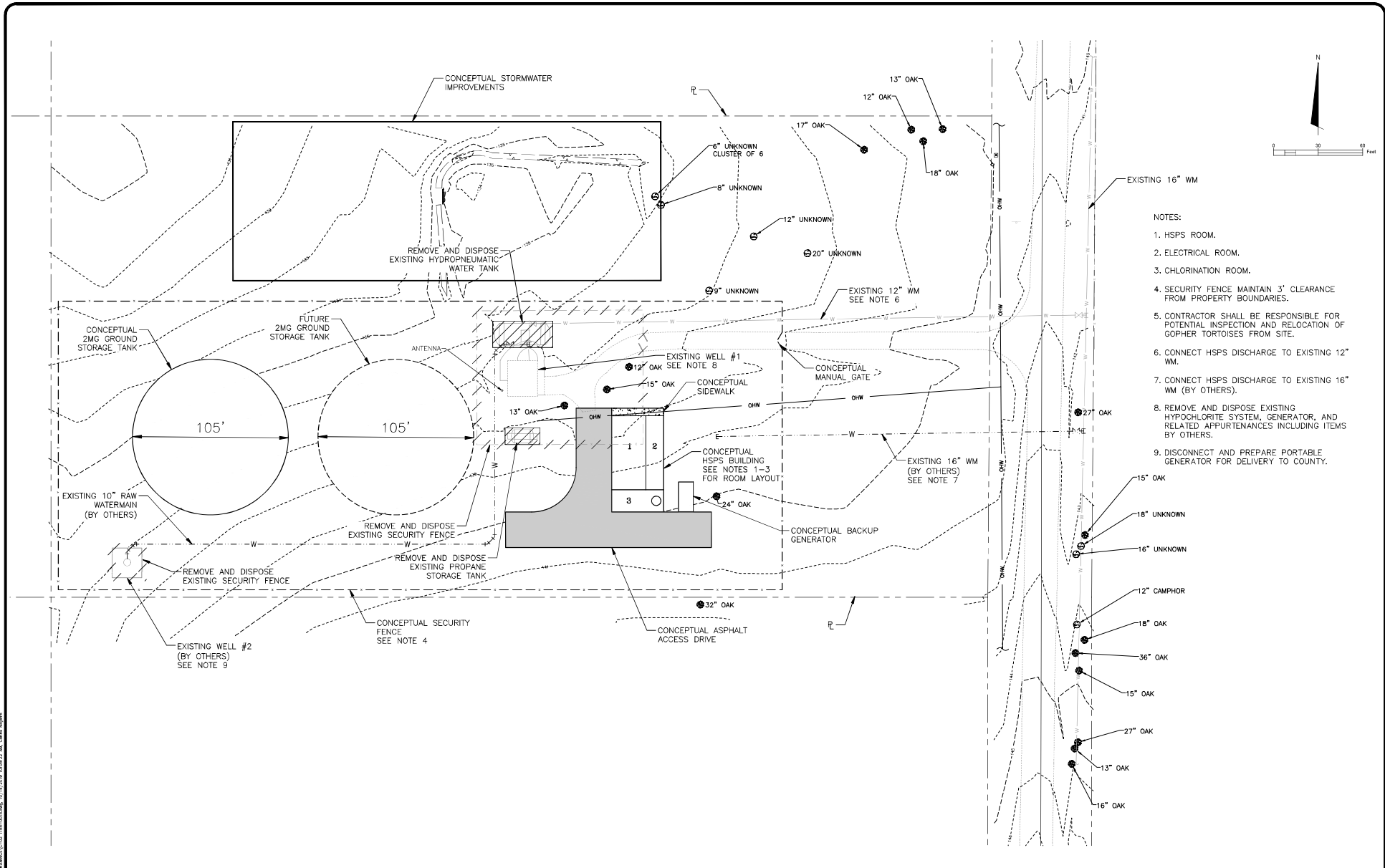
LOCKHART WTP DCP  
 NOT FOR CONSTRUCTION

1384 Homel Ave.  
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 CA Lic. No. 29088  
 www.mkimcreed.com

HERNANDO COUNTY  
 HERNANDO COUNTY UTILITIES  
 CONCEPTUAL OVERALL SITE LAYOUT

KRIS SAMPLES P.E.  
 No. 78645

PROJECT NO.  
 01155-0015  
 C-01



- NOTES:
1. HSPS ROOM.
  2. ELECTRICAL ROOM.
  3. CHLORINATION ROOM.
  4. SECURITY FENCE MAINTAIN 3' CLEARANCE FROM PROPERTY BOUNDARIES.
  5. CONTRACTOR SHALL BE RESPONSIBLE FOR POTENTIAL INSPECTION AND RELOCATION OF GOPHER TORTOISES FROM SITE.
  6. CONNECT HSPS DISCHARGE TO EXISTING 12" WM.
  7. CONNECT HSPS DISCHARGE TO EXISTING 16" WM (BY OTHERS).
  8. REMOVE AND DISPOSE EXISTING HYPOCHLORITE SYSTEM, GENERATOR, AND RELATED APPURTENANCES INCLUDING ITEMS BY OTHERS.
  9. DISCONNECT AND PREPARE PORTABLE GENERATOR FOR DELIVERY TO COUNTY.

10/11/2019 10:58 AM: D:\projects\01155-0015\DWG\01155-0015.dwg, 17/11/2019 10:58:52 AM, Center Station

NO.	DATE	DESCRIPTION

NOTES:

DRAWN BY: CON  
 DESIGNED BY: KS  
 CHECKED BY: PJL  
 DESIGN ENGINEER: KS

SCALE: AS NOTED  
 DATE: SEPTEMBER 2019  
 ACCT.#

LOCKHART WTP DCP  
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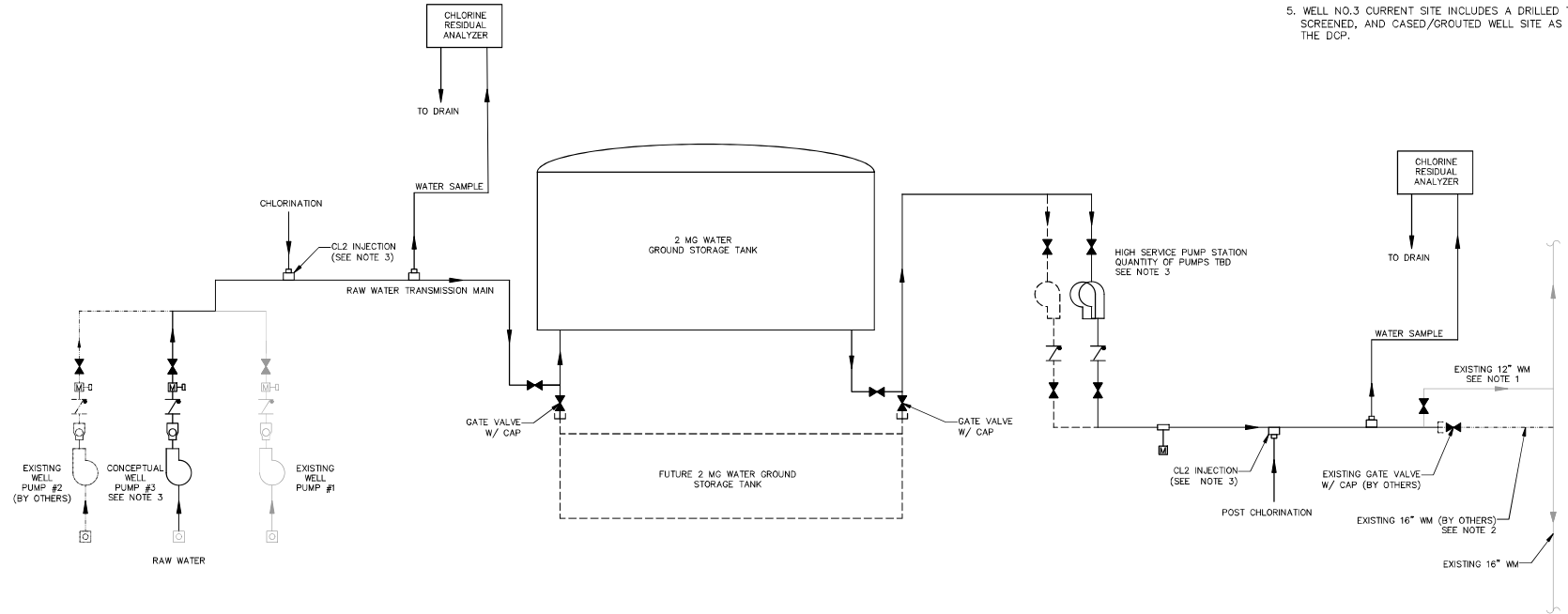
HERNANDO COUNTY  
 HERNANDO COUNTY UTILITIES  
 CONCEPTUAL LOCKHART WTP SITE PLAN

KRIS SAMPLES P.E.  
 No. 78845

PROJECT NO.  
 01155-0015  
 C-02

NOTES:

1. CONNECT HSPS DISCHARGE TO EXISTING 12" WM.
2. CONNECT HSPS DISCHARGE TO EXISTING 16" WM.
3. FLOW METERS AND CHLORINE INJECTIONS SHALL BE INSTALLED ON PIPING ABOVE GROUND.
4. QUANTITY OF HIGH SERVICE PUMPS SHALL BE DETERMINED BASED OFF OF FLOW AND HEAD CONDITIONS OUTLINED IN THE DCP.
5. WELL NO.3 CURRENT SITE INCLUDES A DRILLED TESTED SCREENED, AND CASED/GROUTED WELL SITE AS OUTLINED IN THE DCP.



LEGEND:

- EXISTING
- - - BY OTHERS
- - - - FUTURE
- - - - CONCEPTUAL
- - - - SIGNAL
- ⊠ AIR RELIEF VALVE
- ∇ CHECK VALVE
- ⊠ FLOW METER
- ∞ GATE VALVE
- ⊠ WELL

NOTES:

DRAWN BY: CON  
 DESIGNED BY: KS  
 CHECKED BY: PJL  
 DESIGN ENGINEER: KS

SCALE: AS NOTED  
 DATE: SEPTEMBER 2019  
 ADCT.#

LOCKHART WTP DCP  
 NOT FOR CONSTRUCTION



HERNANDO COUNTY  
 HERNANDO COUNTY UTILITIES  
 CONCEPTUAL WELL SYSTEM  
 PROCESS SCHEMATIC

PROJECT NO.  
 01155-0015

C-03

KRS SAMPLES P.E.  
 No. 78845

REVISIONS

FUNCTION SYMBOL SCHEDULE

FIRST LETTER		SUCCEEDING-LETTERS		
MEASURED OR INITIATING VARIABLE	MODIFIER	READOUT OR PASSIVE FUNCTION	OUTPUT FUNCTION	MODIFIER
A Analysis		Alarm		
B Burner, Combustion		Programmer		
C Conductivity (Electrical)			Control,	Closed
D Density or Specific Gravity	Differential			
E Voltage		Sensor (Primary Element)	Eduction	
F Flow Rate	Ratio (Fraction)			
G Gaging		Glass, Viewing Device		
H Hand				High
I Current (Electrical)		Indicate		
J Power	Scan			
K Time, Time Schedule			Control Station	
L Level		Light (Pilot)		Low
M Motor				Middle, Intermediate
N Vibration	Igniter			
O Operation	Offset	Office, Restriction		Open
P Pressure, Vacuum		Point (Test) Connection		
Q Quantity, Event	Integrate, Totalize	Integrate		
R Radiation		Record, Print	Regulate	
S Speed, Frequency	Safety		Switch	
T Temperature			Transmit	
U Multivariable	Trend	Multifunction	Multifunction	Multifunction
V Viscosity	Vacuum		Valve, Damper, Louver, Gate	
W Weight, Force, Torque		Well		
X Unclassified		Unclassified	Unclassified	Unclassified
Y		Relay, Compute, Convert		
Z Position			Final Control Element	Drive, Actuator, Unclassified Final Control Element

LINE CODES

- EXISTING
- - - - BY OTHERS
- CONCEPTUAL
- - - - FUTURE
- · - · - · SIGNAL

VALVES, PUMPS & METERS

- FLAME ARRESTOR
- PINCH VALVE
- GATE
- NEEDLE
- BUTTERFLY
- BALL OR ROTARY
- GLOBE
- PLUG OR COCK
- DIAPHRAGM
- CHECK
- DIAPHRAGM CHECK
- CONTROL VALVE POSITIONER
- PRESSURE REGULATING VALVE
- AIR RELIEF VALVE
- PISTON OPERATED
- S=SOLENOID OPERATED
- M=MOTOR OPERATED
- P=PNEUMATIC OPERATED
- DRAIN
- Y=WEIR GATE
- T=SLIDE SLUICE GATE
- I=STOP LOG
- BLIND FLANGE
- PULSATION DAMPENER
- PRESSURE RELIEF OR SAFETY
- 3-WAY
- 4-WAY
- TELESCOPING
- REDUCER
- HOSE CONNECTION
- WAFER/CHECK VALVE
- (ARV) AIR RELEASE VALVE
- (AVV) AIR VACUUM RELEASE VALVE
- ELECTRIC MOTOR
- ORIFICE/ANNUBAR
- AIR DIFFUSER
- LIQUID DIFFUSER

MISCELLANEOUS SYMBOLS

- PURGE CONNECTION
- SAMPLE POINT
- INTERLOCK
- MULTIPLY
- DIVIDE
- HIGH SELECT
- LOW SELECT
- SQUARE ROOT
- SUM (ALGEBRAIC)
- SPECIAL FUNCTION
- R+B RATIO PLUS BIAS
- dL/dt RATE OF RISE (LEVEL)

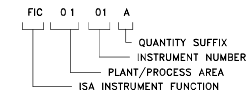
EQUIPMENT NOTATION

- B = BLOWER OR FAN
- E = ENGINE
- G = GENERATOR
- F = FILTER
- GS = GRINDER/SCREEN
- K = COMPRESSOR
- H = HOIST
- ME = MECHANICAL EQUIPMENT
- MX = MIXER
- P = PUMP
- R = HEAT EXCHANGER
- T = TANK OR SUMP

VALVE DESIGNATIONS

- HV = HAND VALVE
- FCV = FLOW CONTROL VALVE (MODULATING)
- PCV = PRESSURE CONTROL VALVE
- LCV = LEVEL CONTROL VALVE
- FV = FLOW VALVE (NON-MODULATING)
- MV = MUD VALVE
- TV = TELESCOPING VALVE
- CV = CHECK VALVE

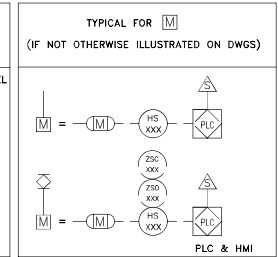
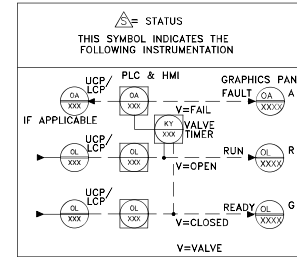
INSTRUMENT TAG NOTATION



BASIC SYMBOLS

- |  |    |  |   |
|--|----|--|---|
|  | OR |  | FIELD MOUNTED INSTRUMENT OR DEVICE  |
|  | OR |  | FRONT OF PANEL MOUNTED INSTRUMENT ON UCP OR MCC, VFD                                      |
|  | OR |  | REAR OF PANEL MOUNTED INSTRUMENT ON UCP OR MCC, VFD                                       |
|  | OR |  | FRONT OF PANEL MOUNTED INSTRUMENT ON MAIN PANEL   |
|  | OR |  | REAR OF PANEL MOUNTED INSTRUMENT ON MAIN PANEL  |
|  | OR |  | PLC AND/OR COMPUTER SOFTWARE COMPONENT (OPERATOR ACCESSIBLE UNDER NORMAL CONDITIONS)      |
|  | OR |  | PLC AND/OR COMPUTER GENERATED COMPONENT (NOT OPERATOR ACCESSIBLE UNDER NORMAL CONDITIONS) |

- CAPACITANCE METER
- REGULATOR/FILTER
- SUBMERSIBLE PUMP
- MAGNETIC METER
- SONIC METER
- VENTURI OR FLOW TUBE
- FLOW METER
- ROTAMETER
- PROGRESSING CAVITY PUMP
- CENTRIFUGAL PUMP(INLINE/INSERT)
- POSITIVE DISPLACEMENT PUMP
- DIAPHRAGM OR METERING PUMP
- EDUCTOR
- STRAINER
- DIAPHRAGM ISOLATOR
- HORN
- GRADUATED (CAL-CYL) MEASURING CYLINDER
- CYLINDER HYDRAULIC OR PNEUMATIC
- LATERAL WYE
- RUPTURE DISK
- RESTRAINED FLEX CONN.
- FLEX CONN.
- FILTER AIR/WATER
- CENTRIFUGAL BLOWER
- POSITIVE DISPLACEMENT BLOWER
- MANUAL BAR RACK
- VERTICAL TURBINE PUMP
- SUBMERSIBLE AERATOR/MIXER (ELECTRIC MOTOR DRIVEN)
- UNION
- VENT TO ATMOSPHERE



NOTES:

DRAWN BY: CON  
DESIGNED BY: KS  
CHECKED BY: PJL  
DESIGN ENGINEER: KS

SCALE: AS NOTED  
DATE: SEPTEMBER 2019  
ACCT.#

LOCKHART WTP DCP  
NOT FOR CONSTRUCTION

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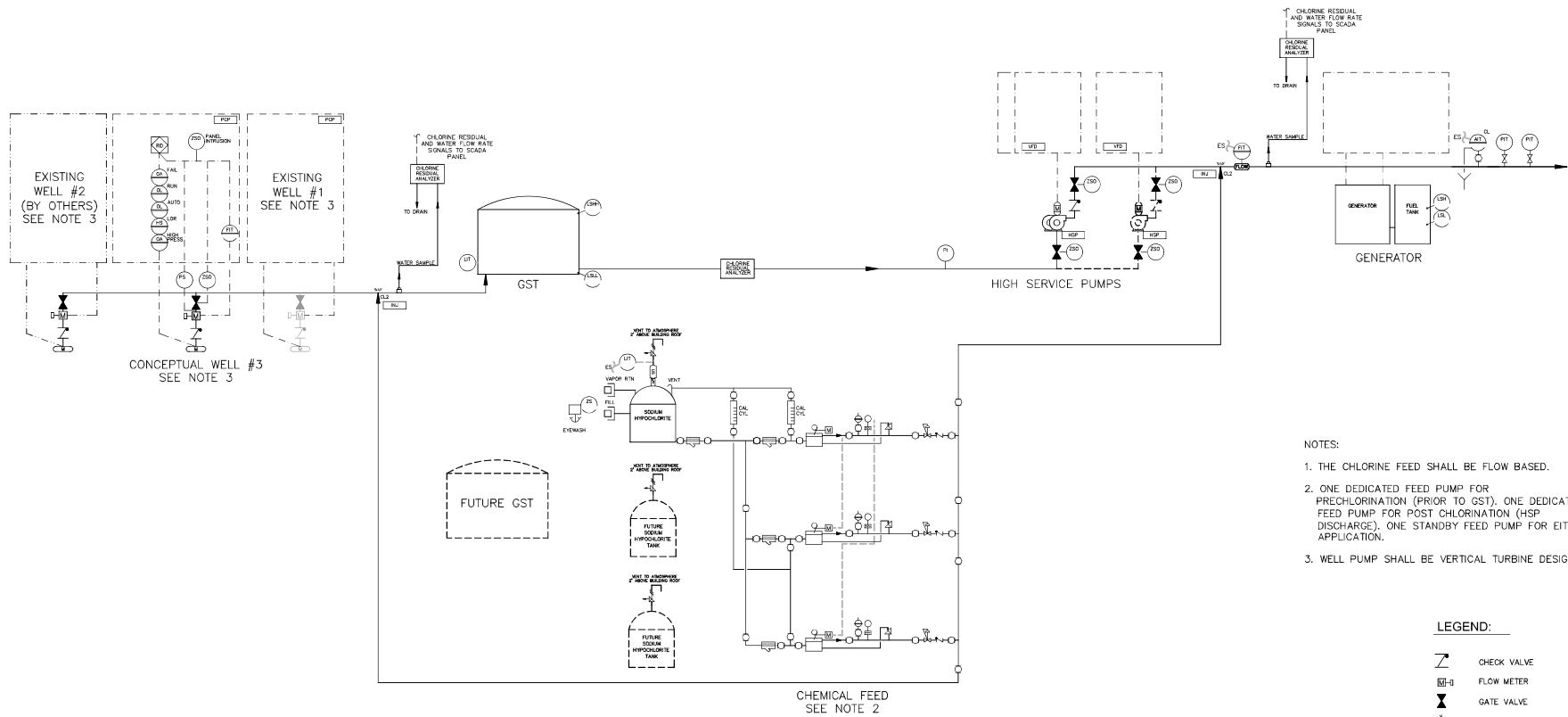
HERNANDO COUNTY  
HERNANDO COUNTY UTILITIES  
P&ID LEGEND

PROJECT NO.  
01155-0015

C-04

KRS SAMPLES P.E.  
No. 78845

REVISIONS



- NOTES:
1. THE CHLORINE FEED SHALL BE FLOW BASED.
  2. ONE DEDICATED FEED PUMP FOR PRECHLORINATION (PRIOR TO GST), ONE DEDICATED FEED PUMP FOR POST CHLORINATION (HSP DISCHARGE), ONE STANDBY FEED PUMP FOR EITHER APPLICATION.
  3. WELL PUMP SHALL BE VERTICAL TURBINE DESIGN.

LEGEND:

- CHECK VALVE
- FLOW METER
- GATE VALVE
- VENT TO ATMOSPHERE
- EXISTING
- BY OTHERS
- CONCEPTUAL
- FUTURE
- SIGNAL

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NO.	DATE	REVISIONS

NOTES:

DRAWN BY: CON  
 DESIGNED BY: KS  
 CHECKED BY: PJL  
 DESIGN ENGINEER: KS

SCALE: AS NOTED  
 DATE: SEPTEMBER 2019  
 ADCT.#

**LOCKHART WTP DCP**  
**NOT FOR CONSTRUCTION**

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HERNANDO COUNTY  
 HERNANDO COUNTY UTILITIES  
 WATER TREATMENT PLANT  
 CONCEPTUAL P&ID

KRIS SAMPLES P.E.  
 No. 78845

PROJECT NO.  
 01155-0015  
**C-05**



**ATTACHMENT B****Proposed Contract Documents**

The Proposed Contract Documents shall be reviewed in full by the Design-builder and is comprised of the following documents:

<b><u>SECTION</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>PAGES</u></b>
I.	DBIA Document 530	39
II.	DBIA Document 535	29

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

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**Document No. 530**

Second Edition 2010  
© Design-Build Institute of America  
Washington, DC



## Design-Build Institute of America - Contract Documents

### LICENSE AGREEMENT

**By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.**

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

# INSTRUCTIONS

For DBIA Document No. 530 Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price (2010 Edition)

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## Checklist

Use this Checklist to ensure that the Agreement is fully completed and all exhibits are attached.

_____	Page 1	Owner's name, address and form of business
_____	Page 1	Design-Builder's name, address and form of business
_____	Page 1	Project name and address
_____	Section 2.1.3	Identify other exhibits to the Agreement
_____	Section 4.2	Note the optional provisions that are provided
_____	Section 4.3.2	Complete blanks for additional sum for use of Work Product
_____	Section 5.2.1	Complete blanks for calendar days and note the optional language that is provided
_____	Section 5.2.2	Insert any interim milestones (optional)
_____	Section 5.4	Complete blanks for liquidated damages and note the optional provisions that are provided
_____	Section 5.5	If the parties select the option provided they have to insert an amount
_____	Section 5.6	Complete blanks for early completion bonus and note the optional provision that is provided
_____	Section 5.7	Note the optional provisions that are provided
_____	Section 6.1.2	Insert basis for pricing preliminary services (optional)
_____	Section 6.2.1	Choose basis for Fee and complete blanks
_____	Section 6.2.2	Insert financial arrangements for adjustments and note optional provisions
_____	Section 6.3.3	Complete blanks for markup; insert or attach personnel names, etc.
_____	Section 6.3.4	Note the optional provision that is provided
_____	Section 6.4.4	Note the optional provision that is provided
_____	Section 6.6.1.1	Complete blanks for GMP, and note the optional provision that is provided
_____	Section 6.6.1.2	Complete blanks for Design-Builder's Contingency
_____	Section 6.6.3.1	Choose method for sharing savings; complete blanks
_____	Section 6.7.1	Note optional provision
_____	Section 7.1.1	Complete blanks for day of month
_____	Section 7.2.1	Complete blanks for retention percentage and note optional provision
_____	Section 7.2.2	Note the optional provision that is provided
_____	Section 7.4	Complete blanks for interest rate
_____	Section 8.1.3	Choose overhead/profit method for termination for convenience
_____	Section 8.2.1	Complete blanks for percentages
_____	Section 8.2.2	Complete blanks for percentages
_____	Section 9.1.1	Insert Owner's Senior Representative's name, etc. (optional)
_____	Section 9.1.2	Insert Owner's Representative's name, etc. (optional)
_____	Section 9.2.1	Insert Design-Builder's Senior Representative's name, etc. (optional)
_____	Section 9.2.2	Insert Design-Builder's Representative's name, etc. (optional)
_____	Section 10.1	Attach Insurance Exhibit
_____	Section 10.2	Insert amount and conditions of bonds or other security and note the options that are provided
_____	Section 11.1	Insert any other provisions (optional)
_____	Last Page	Owner's and Design-Builder's execution of the Agreement

## General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (“DBIA”) has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA’s mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA’s Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA’s Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel. Moreover, care should also be taken when using different editions of the DBIA Standard Form Documents on the same project to ensure consistency.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. DBIA’s latest revisions to its Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project.</p> <p>Any modifications to these Documents should be initialed by the parties. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms-familiarity with the terms.</p>
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

## Specific Instructions

Section	Title	Instruction
General	Purpose of This Agreement	<p>DBIA Document No. 530 (“Agreement”) should be used when the parties intend that Owner pay Design-Builder the Cost of the Work plus a Fee, with or without a Guaranteed Maximum Price (“GMP”). If there is uncertainty about Owner’s Project Criteria, or the Project Criteria remain to be developed by Owner and Design-Builder together, a cost-plus/GMP contracting approach is desirable.</p> <p>If there is certainty as to Owner’s Project Criteria, a lump sum fixed price for the completion of all design and construction services may be suitable, especially when the Owner procures Design-Builder’s services by competitive means. In such case, DBIA Document No. 525 should be used.</p>
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.
General	Related Documents	This Agreement shall be used in conjunction with the General Conditions of Contract. Other related Contract Documents are listed in Article 2 of this Agreement.
General	Date	On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.
General	Parties: Owner and Design-Builder	On Page 1, enter the legal name and full address of Owner and Design-Builder, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.
2.1.2	GMP Exhibit, GMP Proposal	If a GMP is established upon execution of this Agreement, the GMP Exhibit must be attached pursuant to Section 6.6.1.1. If a GMP is established after execution of this Agreement, the GMP Proposal must be attached pursuant to Section 6.6.2. Both the GMP Exhibit and GMP Proposal will include those Basis of Design Documents Design-Builder uses as the basis for its GMP.
2.1.5	Construction Documents	After execution of the Agreement, and consistent with the requirements of Section 2.4 of the General Conditions of Contract, Design-Builder will prepare Construction Documents, subject to Owner’s review and approval.
3.2	Order of Precedence	The Contract Documents are listed in Section 2.1 in the order of their precedence. The GMP Exhibit and GMP Proposal are based on the Basis of Design Documents, which are comprised of various documents. The parties should strongly consider establishing the priority of the various documents comprising the GMP Exhibit or GMP Proposal to avoid disputes should discrepancies arise among the documents. Moreover, Section 2.1.3 recognizes that there may be other exhibits attached to this Agreement. If this is the case, the parties should discuss whether these exhibits should be part of the Basis of Design Documents. If these exhibits are not made part of the Basis of Design Documents, these exhibits will not take priority over the Basis of Design Documents in the event of a conflict.
3.3	Definitions	Terms, words and phrases used in the Agreement shall have the same meanings used in the General Conditions of Contract.
3.4	Design Specifications	The Owner is cautioned that if it includes design specifications in its Project Criteria there is case law holding that the Design-Builder is entitled to rely on such information, and to the extent such information is not accurate, the Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time. Accordingly, the Owner to avoid such potential liability should consider using performance specifications.

Section	Title	Instruction
4.1	Work Product	This Agreement provides that the Design-Builder shall retain ownership of the Work Product it produces, but obligates Design-Builder to grant a limited license to Owner to use the Work Product according to the terms and circumstances described in Sections 4.2, 4.3, 4.4 and 4.5.
4.2	Owner's Limited License Upon Payment in Full	Design-Builder shall grant Owner, at Owner's sole risk, a limited license to use the Work Product at the completion of the Work in connection with Owner's occupation of the Project. This Section also provides the parties with the option of transferring ownership of some or all of the Work Product to the Owner upon payment in full for all Work performed. Generally, where the Owner desires ownership of Work Product, it is sufficient to transfer ownership of unique architectural and design elements.
4.3	Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate	Owner should not use the Termination for Convenience Clause to obtain Design-Builder's valuable design concepts, and then seek lower bids from other design-builders. Therefore, where Owner terminates this Agreement for its convenience, and then decides to complete the Project with its own or thirdparty forces, Design-Builder shall grant Owner the rights set forth in Section 4.2, provided Owner pays Design-Builder all amounts due Design-Builder as required by the Contract Documents, including paying Design-Builder an additional sum per Section 4.3.2 for the use of the Work Product. In the event Design-Builder elects to terminate this Agreement for cause, for reasons set forth in Section 11.4 of the General Conditions of Contract, these same conditions apply to Owner's use of the Work Product.
4.3.2	Additional Compensation	To minimize disputes, the parties should negotiate prior to the execution of the Agreement the amount Owner shall pay Design-Builder for the use of Design-Builder's Work Product in the event Owner terminates this Agreement for its convenience or Design-Builder elects to terminate this Agreement for cause. Enter this amount.
4.4	Owner's Limited License Upon Design-Builder's Default	If Design-Builder is properly terminated for default, Owner is granted a limited license to use the Work Product, to complete the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2.
4.5	Owner's Indemnification for Use of Work Product	Owner's use or alteration of the Work Product shall be at its sole risk, and Owner must agree to defend, indemnify and hold harmless Design-Builder and anyone working by or through Design-Builder, including Design Consultants of any tier.
5.1	Date of Commencement	Design-Builder's obligation to commence work is triggered by its receipt of a Notice to Proceed unless the parties mutually agree otherwise.
5.2.1	Substantial Completion of the Entire Work	Enter the calendar days duration by which Substantial Completion has to be achieved. The parties in this Section have the option of modifying the definition of Substantial Completion set forth in the General Conditions of Contract if they want to use a Temporary Certificate of Occupancy as the benchmark. If this option is selected, Substantial Completion will be deemed to be achieved no later than the date a Temporary Certificate of Occupancy is issued if applicable to the Project.

Section	Title	Instruction
5.2.2	Interim Milestones	<p>It may be that some portions of the Work must be completed in phases or within a prescribed period of time to accommodate Owner's needs. The parties may, at their option, identify these portions of the Work to be completed prior to Substantial Completion of the entire Work. Enter the calendar days, starting from the Date of Commencement, for achieving Substantial Completion of these identified portions of the Work. If these portions of the Work are required to be substantially completed by certain milestone dates, enter those dates. As presently drafted, no remedy is provided to the Owner if an interim milestone is not met. If the Owner has special requirements as it relates to interim milestones, the Owner may want to consider a remedy for the Design-Builder's failure to meet an interim milestone, as well as providing a bonus to the Design-Builder for satisfying such interim milestone.</p>
5.4	Liquidated Damages	<p>Owner should make a good faith evaluation of the amount that is reasonably necessary to compensate it for delay. Owner should not establish liquidated damages to penalize Design-Builder. Moreover, in the event a GMP is not established upon execution of the Agreement, it appears prudent for the parties to refrain from establishing liquidated damages until such time as the GMP is established.</p> <p>Section 5.4 establishes a grace period between the Scheduled Substantial Completion Date and the assessment of liquidated damages in order to prevent disputes as to which party bears responsibility for only a few days of delay. The parties should enter the calendar days that may pass following the Scheduled Substantial Completion Date before liquidated damages will be assessed.</p> <p>The parties are also provided the option of establishing liquidated damages if the Design-Builder fails to achieve Final Completion within a specified number of days after Substantial Completion. If this option is selected, the parties have to negotiate the number of days, as well as the liquidated damages amount. The parties in negotiating liquidated damages should keep in mind that the amount of liquidated damages for failing to achieve Final Completion should be a considerably scaled down amount and should reflect the financial harm to the Owner. In no case should the total amount of liquidated damages for the Project exceed an amount that is reasonably necessary to compensate Owner for Project delay.</p> <p>The parties also have the option here of eliminating liquidated damages altogether, in which case the Owner can recover actual damages for Project delay at an amount that is capped by the parties. The Owner is cautioned that it still cannot recover consequential damages, as they are waived under Section 10.5.1 of the General Conditions of Contract.</p>
5.5	Liquidated Damages Cap	<p>The parties can agree to cap liquidated damages for delay at a negotiated amount.</p>



Section	Title	Instruction
5.6	Early Completion Bonus	If the Project economics justify liquidated damages, then it is appropriate to couple these liquidated damages with an early completion bonus. The parties should enter the number of calendar days prior to the Scheduled Substantial Completion Date that will set the Bonus Date. Also, enter the amount of the bonus to be paid per day that will allow Owner to share with Design-Builder the economic benefits of early completion. Moreover, in the event a GMP is not established upon execution of the Agreement, it appears prudent for the parties to refrain from establishing an early completion bonus until such time as the GMP is established. The parties also have the option in Section 5.6 of capping the early completion bonus at a negotiated amount.
5.7	Compensation for Force Majeure Events	The parties are provided the opportunity of providing the Design-Builder the right to receive compensation for Force Majeure Events. By selecting this option, the parties agree to modify Section 8.2.2 of the General Conditions of Contract, in which case the parties have to negotiate how many cumulative days of Force Majeure delays must occur before the Design-Builder is entitled to either a negotiated amount per day for delay or the direct costs it has incurred as a result of such delay.
6.1.2	Optional Pricing	This Agreement allows the parties the flexibility to establish within the Contract Price a different payment basis for certain preliminary portions of the Work which may be necessary to permit Design-Builder to furnish Owner with a GMP. Alternatively, the parties may use DBIA Document No. 520 to perform certain preliminary design services prior to setting the GMP. Enter a description of any such services, the basis for determining the price, and the price to be paid.
6.2.1	Design-Builder's Fee	Enter the amount of Design-Builder's Fee as a sum certain or as a percentage of the Cost of the Work. Design-Builder's Fee shall be commensurate with the services it provides and the risk it assumes in providing single point responsibility to Owner.
6.2.2	Adjustments to Design-Builder's Fee	For additive Change Orders, the parties have to negotiate the Fee the Design-Builder will receive. For deductive Change Orders, the parties have the option by checking the appropriate box to signify whether there will be no additional reduction or whether there will be an additional reduction based on a negotiated percentage.
6.3.3	Wages for Design-Builder's Employees at Principal or Branch Offices	DBIA endorses reimbursing salaries and associated benefits of Design-Builder's Project personnel, such as accountants, stationed at offices other than the field office, when to do so is more efficient and cost effective. Enter the percentage markup to be applied for Project-related overhead associated with such personnel. Insert, or attach as an exhibit, a list of such personnel and their job functions.
6.3.4	Employee Benefits	It may be simpler for the parties to agree on a multiplier (rather than actual costs) to compensate the Design-Builder for employee benefits. Accordingly, the parties may want to insert the multiplier to be applied to the wages and salaries of such reimbursable employees.

Section	Title	Instruction
6.3.7	Costs for Defective/Non-Conforming Work	The Cost of the Work shall include the costs to repair or correct defective or non-conforming Work (including warranty or corrective work performed after Substantial Completion) unless caused by Design-Builder's negligence. DBIA believes that Design-Builder should not be penalized for inadvertent mistakes which are inevitable when designing and constructing a Project. To do so would encourage ultra-conservatism in every task, the ultimate cost of which would be greater than a proactive approach to performing the Work.
6.3.23	Warranty Escrow	At this section, the parties are provided the opportunity to establish prior to Final Completion an escrow account in a negotiated amount to be used to reimburse the Design-Builder for its costs incurred in performing warranty Work. If funds remain in the escrow account after the expiration of the warranty period, the funds are returned to the Owner subject to Design-Builder's share of any savings. Note that even if the escrow account is exhausted, if funds remain under the GMP, the Owner is still obligated to reimburse the Design-Builder for its warranty Work.
6.4.4	Allowance Value	This section recognizes that the parties may agree that certain items of Work should be treated as an Allowance Item and priced based on Allowance Values. The Allowance Value for which the Design-Builder will be entitled to receive compensation includes direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the Allowance Item. All other costs associated with the Allowance Item, such as design fees, general conditions costs and fee, are deemed to be included in the Contract Price. However, by checking the box, the parties agree that in the event the actual cost of the Allowance Item is greater than or less than the Allowance Value by a negotiated percentage, then Design-Builder's right to Fee and markup shall be determined pursuant to Section 6.2.2.
6.6	The Guaranteed Maximum Price	<p>This Agreement provides the parties flexibility in establishing the Contract Price. Parties can establish a GMP before or after entering into this Agreement, or elect to proceed on the basis of costs plus a fee, without a GMP.</p> <p>If a GMP method is elected, the GMP should not be established until the Basis of Design Documents are sufficiently defined to make the GMP realistic and meaningful. Setting it too early does not permit reasonable opportunity for scope definition and evaluation of Project risk. On the other hand, setting it too late may not achieve Owner's objective of having an early price guarantee to enable it to make decisions relative to the Project.</p>

Section	Title	Instruction
6.6.1.1	GMP at Agreement Execution	<p>Enter the GMP, if appropriate. Attach as an exhibit to this Agreement the Basis of Design Documents used to establish the GMP. These documents comprise the GMP Exhibit which shall become a Contract Document pursuant to Section 2.1.1 of the Agreement. The Design-Builder does not guarantee any specific line item provided as part of the GMP.</p> <p>By selecting the alternate option, the Design-Builder agrees to guarantee the line item in its GMP for general conditions costs only. The Design-Builder agrees that it is responsible for paying general conditions costs in excess of this line item. The Design-Builder does not guarantee any other line items in the GMP.</p>
6.6.1.2	GMP Contingency	<p>Enter the amount of Design-Builder's Contingency. The Contingency is for the exclusive use of the Design-Builder and covers all unanticipated costs incurred that are not the basis of a Change Order. This section sets forth by way of example only the type of costs that would be funded out of the Contingency. Other costs, such as but not limited to any deductibles the Design-Builder is obligated to pay, would be subject to reimbursement. The Design-Builder is also required to provide the Owner with a monthly status report accounting for the Contingency, including all reasonably foreseen uses and potential uses of the Contingency for the upcoming three months.</p> <p>While not provided for in the Contingency provision, DBIA recognizes that there may be situations where the Owner will want to recapture the Contingency prior to Final Completion. For example, the Owner may want to use amounts in the Contingency to fund changes to the Project. The Owner's desire has to be balanced against the Design-Builder's need to use the Contingency to fund unanticipated costs for which it is liable. Accordingly, balancing these competing concerns is usually accomplished by releasing some of the Contingency to the Owner after the Design-Builder has bought out the Subcontractors, providing that the Design-Builder is not obligated to release Contingency amounts in excess of amounts identified for reasonably foreseen uses or potential uses of the Contingency.</p>

Section	Title	Instruction
6.6.2.1	GMP Proposal After Execution of This Agreement	<p>At the request of Owner, Design-Builder shall submit its GMP Proposal, which shall include the items listed in Sections 6.6.2.1.1 to 6.5.2.1.9. If the parties agree to additions or deletions from this list, modify this Section 6.6.2.1 appropriately.</p> <p>The Agreement provides the parties with flexibility as to when the GMP Proposal will be submitted after execution of the Agreement. Prior to execution of the Agreement the parties should discuss when Owner desires Design-Builder to submit its GMP Proposal.</p>
6.6.2.1.4	Schedule	<p>Given that expedited delivery is one of the primary factors driving many owners to select the design-build method, DBIA strongly believes that the parties should discuss and understand what each party must do to support the Project schedule. The entire Work, both design and construction, should be scheduled. The schedule should indicate the dates for the start and completion of the various stages of the Work, including the date when Owner information and approvals are required, and any Owner created constraints. The Agreement also provides flexibility to establish the Scheduled Substantial Completion Date prior to submission of the GMP Proposal.</p>
6.6.2.3	Acceptance of GMP Proposal	<p>If Owner accepts the GMP Proposal, the parties should amend this Agreement to add the final GMP Proposal as a Contract Document pursuant to Section 2.1.2.</p>
6.6.2.4	Failure to Accept the GMP Proposal	<p>This Agreement provides three options for Owner in the event it fails to accept the GMP Proposal and two choices for Design-Builder if Owner fails to exercise any of the three options. These options are specifically designed to prevent one party from receiving a windfall in the event the parties cannot agree on the GMP and the Agreement is terminated.</p> <p>The parties should take note that if Owner exercises its option to terminate for convenience, or Design-Builder suspends performance, Design-Builder will not be entitled to payment for uncompleted Work provided by Section 8.2. However, additional payment for Owner's use of Work Product will be due Design-Builder pursuant to Section 4.3, if Owner proceeds to complete the Project using Design-Builder's Work Product.</p>
6.6.3	Savings	<p>One of the benefits of a GMP approach is the possibility that with good management by Design-Builder and timely support from Owner the actual Cost of the Work and Fee may be less than the GMP. This creates a savings pool that should result in a benefit to both Design-Builder and Owner. Sharing these savings creates an incentive for Design-Builder to save costs. Some factors to consider in determining how the Savings are shared include the timing for the establishment of the GMP and the amount of Design-Builder's Fee established under Section 6.2.1.</p>
6.6.3.1	Savings Calculations	<p>This section provides that if the actual Cost of the Work and Design-Builder's Fee is less than the GMP, as such GMP may have been adjusted, the savings, if any, shall be shared. The Agreement offers two choices for distributing Savings. Choose a method and enter the appropriate figures.</p>

Section	Title	Instruction
6.7	Performance Incentives	In addition for the potential of the Design-Builder to share in Savings as set forth in Section 6.6.3, there may be other performance incentives that will influence Project success. Such incentives may include award fees tied to the Design-Builder achieving certain standards relative to client satisfaction, safety, and personnel retention. The parties are encouraged to discuss the use of such incentives during negotiation of this Agreement. Any agreement on the use of incentives should be set forth in an exhibit attached to this Agreement.
7.1.1	Progress Payments	Enter the day of the month when Design-Builder shall submit its Application for Payment.
7.2.1	Retainage	<p>Enter the percentage Owner will retain from Progress Payments to Design-Builder until fifty percent (50%) of the Work is completed. Owner should recognize that it creates undue hardship to hold retainage on Subcontractors that have completed their work early in the Project. Owner should accordingly consider releasing retainage on Subcontractors that complete work early in the Project, providing that these Subcontractors have satisfactorily performed their portion of the Work.</p> <p>The parties are provided the option of modifying the retainage provision by checking the box. This option excludes from retainage the Design-Builder's General Conditions costs and amounts paid to Design-Builder's Design Consultant. The rationale for selecting this option is that the Design-Builder is obligated to pay its General Conditions costs in full each month and that under the design-bid-build delivery method, the Owner typically does not retain sums from its Designer.</p>
7.2.2	Release of Retainage	This section requires the Owner to release retainage to the Design-Builder. If the Design-Builder and Owner have established a warranty reserve in accordance with Section 6.3.2.4, the parties shall establish an escrow account at this time.
7.4	Interest	The parties should enter the rate at which interest will accrue on Design-Builder's payments if unpaid five (5) days after due. Late payment creates a hardship for Design-Builder, its Design Consultants and Subcontractors.
7.5	Record Keeping	The Owner is provided access to Design-Builder's accounting information as it relates to Costs of the Work. However, if the parties have agreed to multipliers or markups, the time to challenge and negotiate those percentages is at the time the parties execute the Agreement and not during the Project or after it has been completed. Accordingly, the Owner can at any time audit these percentages only to confirm that such percentage has been properly charged and not to challenge the composition of such percentage.

Section	Title	Instruction
8.1.3	Termination for Convenience: Overhead and Profit	The parties should choose prior to execution of the Agreement the method that will be used to determine overhead and profit paid to Design-Builder in the event Owner terminates Design-Builder for its convenience. The parties may choose to set percentage rates for overhead and profit prior to execution of the Agreement, or may choose to determine reasonable sums to be paid for overhead and profit at the time of the termination. If the parties choose to set overhead and profit rates prior to execution of the Agreement, the percentages should be entered in Section 8.1.3.
8.2	Termination for Convenience: Additional Payments	Although it is important for Owner to have a process for terminating this Agreement for convenience, the process must consider the interests of Design-Builder. If Owner terminates this Agreement for its own convenience, compensating Design-Builder for its costs will not be adequate because Design-Builder will have committed its resources for a small amount of revenue. Therefore, in addition to the overhead and profit paid in Section 8.1, Owner shall pay Design-Builder an additional sum, calculated as a percentage of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price. Enter the percentages Owner shall pay Design-Builder if Owner terminates this Agreement for its own convenience prior to or after the start of construction.
8.3	Termination for Convenience: Owner's Use of Work Product	Owner should not use the Termination for Convenience clause to obtain Design-Builder's valuable design concepts and then seek lower bids from another design-builder. If Owner terminates this Agreement for its own convenience, and chooses to proceed with the Project using Design-Builder's Work Product, Owner should pay an additional sum for the use of Design-Builder's Work Product pursuant to Section 4.3.
Article 9	Representatives of the Parties	<p>Enter the name, title, address and telephone number of Owner's Senior Representative and Owner's Representative at Sections 9.1.1 and 9.1.2, respectively.</p> <p>Enter the name, title, address and telephone number of Design-Builder's Senior Representative and Design-Builder's Representative at Sections 9.2.1 and 9.2.2, respectively.</p> <p>The parties can elect to establish these Representatives during the performance of the Project rather than at the time of execution of this Agreement. If Representatives are identified after execution of the Agreement, an appropriate amendment should be made to the Agreement at the time these individuals are designated.</p>
10.1	Insurance	Attach an Insurance Exhibit setting forth in detail the insurance coverages required for the Project. Parties are advised to familiarize themselves with the terms of Article 5 of the General Conditions of Contract, Insurance and Bonds, and to consult their insurance advisor.
10.2	Bonds	Enter the type and amount of bonds or other performance security required for the Project. Where bonding is not required by statute, Owner may want to evaluate the project risks versus the bonding costs in deciding what type of performance security to require.

<b>Section</b>	<b>Title</b>	<b>Instruction</b>
11.1	Other Provisions	Insert any other provisions. For example, the parties may elect to have disputes resolved through litigation rather than arbitration in which case the optional language in this Section should be included.

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

*This document has important legal consequences. Consultation with  
an attorney is recommended with respect to its completion or modification.*

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This **AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year of 20\_\_\_\_\_, by and between the following parties, for services in connection with the Project  
identified below:

**OWNER:**

*(Name and address)*

**DESIGN-BUILDER:**

*(Name and address)*

**PROJECT:**

*(Include Project name and location as it will appear in the Contract Documents)*

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

## **Article 1**

### **Scope of Work**

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

## **Article 2**

### **Contract Documents**

**2.1** The Contract Documents are comprised of the following:

**2.1.1** All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) (“General Conditions of Contract”);

**2.1.2** The GMP Exhibit referenced in Section 6.6.1.1 herein or, if applicable, the GMP Proposal accepted by Owner in accordance with Section 6.6.2 herein;

**2.1.3** This Agreement, including all exhibits (List for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices, or exhibit detailing offsite reimbursable personnel) but excluding, if applicable, the GMP Exhibit;

**2.1.4** The General Conditions of Contract; and

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

## **Article 3**

### **Interpretation and Intent**

**3.1** Design-Builder and Owner, prior to execution of the Agreement (and again, if applicable, at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6.6.2 hereof), shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement or, if applicable, prior to Owner’s acceptance of the GMP Proposal.

**3.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, or if applicable, after Owner’s acceptance of the GMP Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. *(Note, the parties are strongly encouraged to establish in the GMP Exhibit or GMP Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)*

**3.3** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

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

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

## Article 4

### Ownership of Work Product

**4.1 Work Product.** All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

**4.2 Owner's Limited License upon Project Completion and Payment in Full to Design-Builder.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

*[At the parties' option, one of the following may be used in lieu of Section 4.2.]*

Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder: (a) grants Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of architectural and other design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

or

Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or

through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligations to provide the indemnity set forth in Section 4.5 below.

**4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

**4.3.1** Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below, and

**4.3.2** Owner agrees to pay Design-Builder the additional sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

**4.4 Owner's Limited License upon Design-Builder's Default.** If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

**4.5 Owner's Indemnification for Use of Work Product.** If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

## **Article 5**

### **Contract Time**

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

**5.2 Substantial Completion and Final Completion.**

**5.2.1** Substantial Completion of the entire Work shall be achieved no later than \_\_\_\_\_ (\_\_\_\_\_) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

***[At the parties' option, the following supplemental language may be inserted at the end of Section 5.2.1 if the Project is subject to a Temporary Certificate of Occupancy.]***

The parties agree that the definition for Substantial Completion set forth in Section 1.2.18 of the General Conditions of Contract is hereby modified to read as follows:

“*Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official.”

**5.2.2** Interim milestones and/or Substantial Completion of identified portions of the Work (“Scheduled Interim Milestone Dates”) shall be achieved as follows: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

**5.2.3** Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

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

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

**5.4 Liquidated Damages.** Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by \_\_\_\_\_ (\_\_\_\_\_) days after the Scheduled Substantial Completion Date (the “LD Date”), Design-Builder shall pay Owner \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. *(If a GMP is not established upon execution of this Agreement, the parties should consider setting liquidated damages after GMP negotiations.)*

***[The parties may want to consider the following supplemental language within Section 5.4 if they want to assess liquidated damages for failing to meet Final Completion. In this case, the first sentence in Section 5.2.3 should be deleted and replaced with the following language.]***

Design-Builder understands that if Final Completion is not achieved within \_\_\_\_\_ days of the Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within \_\_\_\_\_ (\_\_\_\_\_) days of Substantial Completion, Design-Builder shall pay to Owner \_\_\_\_\_ Dollars (\$\_\_\_\_\_), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

***[In lieu of the liquidated damages specified in Section 5.4 or the alternate provided herein, the Parties may decide that the Agreement will provide for actual damages in the event of Project delay, with Owner being cautioned that there is a waiver of consequential damages under Section 10.5.1 of the General Conditions of Contract. In this case, delete Sections 5.4 and 5.5 and insert the following.]***

**5.4** Design-Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Builder to achieve the Contract Time(s) set forth in this Article 5. Design-Builder understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth herein are not timely achieved. Owner shall be able to recover such actual damages from Design-Builder to the extent it can demonstrate that actual damages have been incurred, are directly related and caused by Design-Builder’s failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract. Notwithstanding the foregoing, in no event shall Design-Builder’s liability for actual damages for delays exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

**5.5** Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

***[The Parties may also desire to cap the liquidated damages payable under this Agreement, in which case the following language should be included at the end of Section 5.5.]***

Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement for failure to achieve the Contract Time(s) shall be \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

**5.6 Early Completion Bonus.** If Substantial Completion is attained on or before \_\_\_\_\_ (\_\_\_\_\_) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for each day that Substantial Completion is attained earlier than the Bonus Date. *(If a GMP is not established upon execution of this Agreement, the parties should consider setting the early completion bonus after GMP negotiations. If an early completion bonus is applicable to any dates set forth in Section 5.2.2 or 5.2.3 hereof, this Section 5.6 will need to be modified accordingly.)*

***[The Parties may also desire to cap the early completion bonus payable under Section 5.6, in which case the following language should be included.]***

Owner and Design-Builder agree that the maximum aggregate amount that Design-Builder shall receive as the early Completion Bonus is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

**5.7** ***[The Parties may also desire to modify Article 8.2.2 of the General Conditions of Contract relative to compensability of delays that would cause the Contract Time(s) to be extended. In such case, the following option can be used.]***

In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Builder shall only be entitled to an increase in the Contract Price if said events exceed \_\_\_\_\_ (\_\_\_\_\_) cumulative days. Said additional compensation shall be limited to:

***[Check one box only]***

\$ \_\_\_\_\_ dollars a day for each day work is delayed beyond the Scheduled Substantial Completion Date.

or

the direct costs and expenses Design-Builder can demonstrate it has reasonably and actually incurred as a result of such event.

## **Article 6**

### **Contract Price**

#### **6.1 Contract Price.**

**6.1.1** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to Design-Builder's Fee (as defined in Section

6.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to any GMP established in Section 6.6 hereof and any adjustments made in accordance with the General Conditions of Contract.

**6.1.2** For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited preliminary services, such as a lump sum or cost-plus arrangement for preliminary design, programming, or services necessary to enable Design-Builder to furnish Owner with a GMP before execution of this Agreement.)*

**6.2 Design-Builder's Fee.**

**6.2.1** Design-Builder's Fee shall be:

***[Choose one of the following:]***

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), as adjusted in accordance with Section 6.2.2 below.

or

\_\_\_\_\_ percent ( \_\_\_\_\_ %) of the Cost of the Work, as adjusted in accordance with Section 6.2.2 below.

**6.2.2** Design-Builder's Fee will be adjusted as follows for any changes in the Work:

**6.2.2.1** For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the additional Costs of the Work incurred for that Change Order, plus any other markups set forth in Exhibit \_\_\_\_\_ hereto.

**6.2.2.2** For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

***[Check one box only]***

No additional reduction to account for Design-Builder's Fee or any other markup.

or

An amount equal to the sum of: (a) \_\_\_\_\_ percent ( \_\_\_\_\_ %) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth in Exhibit \_\_\_\_\_ hereto applied to the direct costs of the net reduction.

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

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



**6.3.2** Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

**6.3.3** Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit \_\_\_\_\_ and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a \_\_\_\_\_ percent (\_\_\_\_\_% ) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

**6.3.4** Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

***[In lieu of the language in Section 6.3.4 above, Design-Builder and Owner may want to include the following language:]***

A multiplier of \_\_\_\_\_ percent (\_\_\_\_\_% ) shall be applied to the wages and salaries of the employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

**6.3.5** The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

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

**6.3.7** Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

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

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

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

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



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

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

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

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

**6.3.16** Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

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

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

**6.3.19** Deposits which are lost, except to the extent caused by Design-Builder's negligence.

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

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

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

***[Design-Builder and Owner may want to consider adding the following Section 6.3.23 to address the payment of warranty work:]***

**6.3.23** Owner and Design-Builder agree that an escrow account in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) shall be established prior to Final Completion, which escrow shall be used to reimburse Design-Builder for the Costs of the Work incurred after Final Completion to perform warranty Work. The escrow agreement will provide that any sums not used at the expiration of the warranty period shall be returned to Owner, subject to any savings Design-Builder may be entitled to under this Agreement. In the event the warranty escrow account is exhausted, but funds remain under the GMP, Owner shall be obligated to pay Design-Builder the Costs of the Work incurred after Final Completion to perform warranty Work up to the GMP.

#### **6.4 Allowance Items and Allowance Values.**

**6.4.1** Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the GMP Exhibit or GMP Proposal and are included within the GMP.

**6.4.2** Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to

constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

**6.4.3** No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

**6.4.4** The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

***[In the alternative, the parties may want to delete Section 6.4.4 and add the following provision.]***

In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with an Allowance Item is \_\_\_\_\_ percent (\_\_\_\_\_% ) greater than or less than the Allowance Value for such Allowance Item, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be adjusted in accordance with Section 6.2.2.

**6.4.5** Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

## **6.5 Non-Reimbursable Costs.**

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

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

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

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

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

***[The parties shall comply with the following Section 6.6 based upon whether the GMP is agreed upon before the execution of this Agreement or will be developed and agreed upon after execution of this Agreement. If the parties do not use a GMP, this Section 6.6 shall be deemed inapplicable and compensation to Design-Builder shall be based on those fees and costs identified in the balance of this Article 6.]***

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

**6.6.1 GMP Established Upon Execution of this Agreement.**

**6.6.1.1** Design-Builder guarantees that it shall not exceed the GMP of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Documents used as a basis for the GMP shall be identified in an exhibit to this Agreement ("GMP Exhibit"). Design-Builder does not guarantee any

specific line item provided as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. *(While the GMP Exhibit will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 6.6.2.1 below, to ensure that the basis for the GMP is well-understood).*

***[In lieu of 6.6.1.1, Owner and Design-Builder may want to include the following language.]***

Design-Builder guarantees that it shall not exceed the GMP of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Documents used as basis for the GMP shall be identified as an exhibit to this Agreement ("GMP Exhibit"). Design-Builder does not guarantee any specific line item provided as part of the GMP, provided, however, that it does guarantee the line item for its general project management and general conditions costs, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), and as set forth in the GMP Exhibit ("General Conditions Cap"). Design-Builder agrees that it will be responsible for paying the applicable general conditions costs in excess of the General Conditions Cap, as well as be responsible for all costs of completing the Work which exceed the GMP, as said General Conditions Cap and the GMP may be adjusted in accordance with the Contract Documents.

**6.6.1.2** The GMP includes a Contingency in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

**6.6.2 GMP Established after Execution of this Agreement.**

**6.6.2.1 GMP Proposal.** If requested by Owner, Design-Builder shall submit a GMP Proposal to Owner which shall include the following, unless the parties mutually agree otherwise:

**6.6.2.1.1** A proposed GMP, which shall be the sum of:

i. Design-Builder's Fee as defined in Section 6.2.1 hereof;

ii. The estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.1.2 hereof; and

iii. If applicable, any prices established under Section 6.1.2 hereof.

**6.6.2.1.2** The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the GMP Proposal;

**6.6.2.1.3** A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

**6.6.2.1.4** The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;

**6.6.2.1.5** If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

**6.6.2.1.6** If applicable, a schedule of alternate prices;

**6.6.2.1.7** If applicable, a schedule of unit prices;

**6.6.2.1.8** If applicable, a statement of Additional Services which may be performed but which are not included in the GMP and which, if performed, shall be the basis for an increase in the GMP and/or Contract Time(s); and

**6.6.2.1.9** The time limit for acceptance of the GMP Proposal.

**6.6.2.2** Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

**6.6.2.3** Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

**6.6.2.4** Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

**6.6.2.4.1** Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.2.3 above;

**6.6.2.4.2** Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1 hereof without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

**6.6.2.4.3** Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (i) continue with the Work as if Owner had elected to proceed in accordance with Item 6.6.2.4.2 above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, or (ii) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

### 6.6.3 Savings.

**6.6.3.1** If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

***[Choose one of the following:]***

\_\_\_\_\_ percent (\_\_\_\_\_%) to Design-Builder and \_\_\_\_\_ percent (\_\_\_\_\_%) to Owner.

or

The first \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) of Savings shall be provided to (*choose either Design-Builder or Owner*) \_\_\_\_\_, with the balance of Savings, if any, shared \_\_\_\_\_ percent (\_\_\_\_\_% ) to Design-Builder and \_\_\_\_\_ percent (\_\_\_\_\_% ) to Owner.

**6.6.3.2** Savings shall be calculated and paid as part of Final Payment under Section 7.3 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

### 6.7 Performance Incentives

**6.7.1** Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit \_\_\_\_\_.

*[The parties are encouraged to discuss and agree upon performance incentives that will influence project success. These incentives may consist of Award Fees, incentives for safety, personnel retention, client satisfaction and similar items.]*

## Article 7

### Procedure for Payment

#### 7.1 Progress Payments.

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

7.1.2 Owner shall make payment within ten (10) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

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

#### 7.2 Retainage on Progress Payments.

7.2.1 Owner will retain \_\_\_\_\_ percent (\_\_\_\_\_% ) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

***[Design-Builder and Owner may want to consider substituting the following retainage provision.]***

Owner will retain \_\_\_\_\_ percent (\_\_\_\_\_% ) of the cost of Work, exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

7.2.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

***[If Owner and Design-Builder have established a warranty reserve pursuant to Section 6.3.23 above, the following provision should be included.]***

If a warranty reserve has been established pursuant to Section 6.3.23 above, Owner shall at the time of Substantial Completion retain the agreed-upon amounts and establish an escrow account as contemplated by Section 6.3.24 above.

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

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

**7.5 Record Keeping and Finance Controls.** Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

## Article 8

### Termination for Convenience

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

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

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

**8.1.3** *[Choose one of the following:]*

The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.

or

Overhead and profit in the amount of \_\_\_\_\_ percent (\_\_\_\_\_ %) on the sum of items 8.1.1 and 8.1.2 above.

**8.2** In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

**8.2.1** If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid \_\_\_\_\_ percent (\_\_\_\_\_ %) of the remaining



balance of the Contract Price, provided, however, that if a GMP has not been established, the above percentage shall be applied to the remaining balance of the most recent estimated Contract Price.

**8.2.2** If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid \_\_\_\_\_ percent (\_\_\_\_\_% ) of the remaining balance of the Contract Price, provided, however, that if a GMP has not been established, the above percentage shall be applied to the remaining balance of the most recent estimated Contract Price.

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

*[The following Article 9 should only be used if Owner and Design-Builder agree to establish their respective representatives at the time the Agreement is executed rather than during the performance of the Project.]*

## **Article 9**

### **Representatives of the Parties**

#### **9.1 Owner's Representatives.**

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

**9.1.2** Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

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

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

**9.2.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*





Vendor/Contractor's obligation to perform the work in accordance with the Contract Documents:

- 10.3.3.1 Observations by Owner Designated Representative;
  - 10.3.3.2 Recommendation by Owner Designated Representative or payment by Owner of any progress or final payment;
  - 10.3.3.3 The issuance of a certificate of Substantial Completion by Owner Designated Representative or any payment related thereto by Owner;
  - 10.3.3.4 Use or occupancy of the work or any part thereof by Owner;
  - 10.3.3.5 Any review and approval of a shop drawing or sample submittal or the issuance of a notice of acceptability by Owner Designated Representative;
  - 10.3.3.6 Any inspection, test, or approval by others; or
  - 10.3.3.7 Any correction of defective work by Owner.
- 10.3.4 The Vendor/Contractor shall provide and maintain in a neat and sanitary condition, such accommodations for the use of his employees as may be necessary to comply with the requirements of the State Board of Health or of the Owner Designated Representative.
- 10.3.5 The Vendor/Contractor shall be responsible for installing, operating and maintaining all traffic control associated with the project, including detours, advance warnings, channelization or other features, both at the immediate work site and at any outlying points determined by the Owner to be necessary to satisfy project requirements and to maintain safe operations at the work site. If traffic control is necessary, the Vendor/Contractor shall prepare a detailed traffic control plan. This plan shall be approved in writing by the Owner prior to implementation by the Vendor/Contractor.

## **Article 11**

### **Other Provisions**

#### **11.1 Other provisions, if any, are as follows:** *(Insert any additional provisions)*

- 11.1.1 This Agreement shall be governed by and construed according to Florida law. Venue for any dispute or formal litigation concerning this Agreement shall be in the appropriate court with territorial jurisdiction over Hernando County, Florida. In the event of a dispute or litigation, each party to such dispute or litigation shall be solely responsible for its own attorneys' fees and costs. This Agreement shall not be construed for or against any party hereto, without regard to which party is wholly or partly responsible for its drafting. Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and/or any other claim of injury or damage.
- 11.1.2 The Vendor/Contractor will keep adequate records and supporting documents applicable to this Contract. Said records and documentation will be retained by the Vendor/Contractor for a minimum of five (5) years from the date of final payment on this Contract. The County and its authorized agents shall have the right to audit, inspect and copy records and

documentation as often as the County deems necessary during the period of this Contract and a period of five (5) years after completion of Contract performance; provided however, such activity shall be conducted only during normal business hours. The County during the period of time defined by the preceding sentence, shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of the Vendor/Contractor as concerns the aforesaid records and documentation. Pursuant to Section 119.0701, Florida Statutes (current version), Consultant/Firm shall comply with the Florida Public Records' laws and shall:

- 11.1.2.1 Keep and maintain records that ordinarily and necessarily would be required by the public agency in order to perform the service;
- 11.1.2.2 Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- 11.1.2.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirement are not disclosed except as authorized by law; and,
- 11.1.2.4 Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Consultant/Firm upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.
- 11.1.2.5 Failure to comply with this section shall be deemed a breach of the Contract and enforceable as set forth in Section 119.0701, Florida Statutes (current version).
- 11.1.2.6 Per Florida Statute 20.055(5) (Current Edition), it is the duty of every state officer, employee, agency, special district, Board, Commission, Consultant, and Sub-Consultant to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing pursuant to this section.

11.1.2.7 **QUALIFICATIONS OF SURETY COMPANIES:**

In order to be acceptable to the Owner, a surety company issuing Bid Guaranty bonds, or **100% Performance/Payment bonds**, called for in these Contract Documents, shall meet and comply with the following minimum standards:

- 11.1.2.7.1 Surety must be admitted to do business in the State of Florida and shall comply with the provisions of Florida Statute 255.05 (current version).
- 11.1.2.7.2 Surety companies executing bonds must appear on the United States Treasury Departments most current list (CIRCULAR 570 AS AMENDED).
- 11.1.2.7.3 Attorneys-in-fact who sign Bid bonds or performance/payment bonds must file with such bond a certified copy of their power of attorney to sign such bond.
- 11.1.2.7.4 Agents of surety companies must list their name, address and telephone number on all bonds.
- 11.1.2.7.5 If the surety on any Bond furnished by the successful Bidder is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the project is located or it ceases to meet the requirements provided in this Paragraph, Bidder

(Vendor/Contractor) shall within five (5) days thereafter, substitute another Bond and Surety, both of which must be acceptable to the County.

11.1.2.7.6 **FISCAL NON-FUNDING:** In the event sufficient budgeted funds are not available for a new fiscal period, the County must notify the Vendor/Contractor of such occurrence and Contract shall terminate on the last day of current fiscal period without penalty or expense to the County.

11.1.2.7.7 **TAXES:**

The Board of County Commissioners, Hernando County, Florida, has the following tax exemption certificates assigned:

Sales & Use Tax Exemption Certificate No. 85-8012556945C-8, effective 1/31/2019 – expiring on 1/31/2024.

This exemption does not apply to purchases of tangible personal property made by Vendor/Contractors who use the tangible personal property in the performance of Contracts for improvements of County owned real property (Chapters 192 and 212, F.S. (current version) and applicable rules of the Department of Revenue).

State sales tax and use taxes on materials and equipment are to be incorporated in the price Bid.

Vendor/Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Vendor/Contractor in accordance with the laws and regulations of the place of the project which are applicable during the performance of the work.

11.1.2.7.8 **PROMPT PAYMENT ACT:** All progress payments will be subject to withholding and payment of retainage as specified under the provisions of Ch. 218.735, F.S. (current version) and as stipulated in the Contract Agreement attached herein. Payment requests will be processed within the time periods established by applicable provisions of the Florida Prompt Payment Act, Part VII, Ch. 218.735, F.S (current version).

11.1.2.7.9 **COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT:** All construction practices, material, equipment, etc., as proposed and offered by Bidders must meet and conform to all O.S.H.A. requirements; the Bidder's signature upon the Bid Form in these Bid Documents, being by this reference considered a certification of such fact.

11.1.2.7.10 **TRENCH SAFETY ACT:** Vendor/Contractor shall be solely responsible for complying with the Florida Trench Safety Act as established under 553.60 through 553.64, Florida Statutes (current version), and under the OSHA excavation safety standards as established under 29 CFR 1926.650 (sub-part P) as amended. All costs associated with complying with these requirements shall be included in the Proposal.

11.1.2.7.11 **MATERIAL SAFETY DATA SHEETS:** In accordance with Florida Emergency Planning and Community Right-to-Know Act, Chapter

252, Part II, Florida Statutes (Current Edition), it is the seller's duty to advise Hernando County if a product is a listed toxic substance and to provide a material safety data sheet (MSDS) at the time of delivery. Vendor/Contractors must comply with this procedure along with the Federal Emergency Planning and Community Right-to-Know Act (42 U.S.C. Ch 116 (Current Edition)) and the Federal Hazard Communications Standards (29CFR sec.1910.1200) all other applicable laws.

11.1.2.7.12 **NON-DISCRIMINATION IN PERFORMANCE:** No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Agreement.

11.1.2.7.13 **LOBBYING:** All Vendors/Contractors or representatives are hereby placed on formal notice. A lobbying "Cone of Silence" period shall commence upon issuance of the Solicitation until the Board selects the successful Proposer. For procurements that do not require Board approval, the "Cone of Silence" period commences upon Solicitation issuance and concludes upon Contract award.

Neither the members of the Board of County Commissioners nor candidates for County Commission, nor any employees from the Hernando County Government, Hernando County staff members, nor any members of the evaluation team are to be lobbied, either individually or collectively, concerning this project. Vendors/Contractors or representatives who intend to submit Proposals, or have submitted Proposals, for this project are hereby placed on formal notice that they are not to contact County personnel for such purposes as holding meetings of introduction, meals, or meetings relating to the selection process outside of those specifically scheduled by the County. Any such lobbying activities may cause immediate disqualification of this project.

11.1.2.7.14 **GRATUITIES AND KICKBACKS:**

**Gratuities:** It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity to the County.

**Kickbacks:** It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a Sub-Contractor under a Contract to the prime Vendor/Contractor or higher tier Sub-Contractor or any person associated therewith, as an inducement for the award of a Sub-Contract or order.

11.1.2.7.15 **SURVEY CONTROL:** Vendor/Contractor will furnish all surveys and construction stakeouts unless otherwise specified. The Vendor/Contractor will provide horizontal control and bench marks or elevations for vertical control. The Vendor/Contractor shall furnish, free of charge, all stakes, all templates, and other

materials necessary for marking and maintaining points and lines given. The Vendor/Contractor shall be held responsible for the preservation of all stakes and markers, and if the stakes or markers are destroyed or disturbed, the cost of replacing them shall be charged against the Vendor/Contractor, and shall be deducted from the payment for the work. The Vendor/Contractor shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

11.1.2.7.16 **VEHICLE LICENSING:** All prime Vendor/Contractors, including their subs, must obtain a temporary vehicle license for each and every out-of-state vehicle, personal or business (including trailers) that will be operating on-site. The cost shall be borne by the Vendor/Contractor. You must present evidence of title to the Tax Collector's Office to obtain the required temporary licenses.

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

11.1.2.7.18 **SURVIVAL OF OBLIGATIONS:** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the work or termination or completion of the Contract or termination of the services of Vendor/Contractor.

11.1.2.7.19 **LAWS, REGULATIONS, PERMITS AND TAXES:** The Proposer's attention is directed to the fact that all applicable Federal and State laws, municipal and county ordinances, and the rules and regulations of all authorities having jurisdiction over any part of the project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as through herein written.

Vendor/Contractor shall comply with County's jobsite procedures and regulations and with all applicable local, state and federal laws, rules and regulations and shall obtain all permits required for any of the work performed hereunder. Vendor/Contractor shall procure and pay for all permits and inspections required for any of the work performed hereunder and shall furnish any bonds, security or deposits required to permit performance of the work. Vendor/Contractor shall, to the extent permissible under applicable law, comply with the jobsite provisions which validly and lawfully apply to work on the specific jobsite being performed under this Contract. County of Hernando is exempt from Federal Excise Taxes and all Sales Taxes.

Vendor/Contractor shall give all notices required by and shall comply with all laws and regulations applicable to the performance of the work. Except where otherwise expressly required by applicable laws and regulations, neither Owner nor Engineer shall

be responsible for monitoring Vendor/Contractor's compliance with any laws or regulations.

If Vendor/Contractor performs any work knowing or having reason to know that it is contrary to laws or regulations, Vendor/Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or **arbitration** or other dispute resolution costs) arising out of or relating to such work. However, it shall not be Vendor/Contractor's primary responsibility to make certain that the specifications and drawings are in accordance with laws and regulations, but this shall not relieve Vendor/Contractor of Vendor/Contractor's obligations of reporting discrepancies.

Changes in laws or regulations not known at the time of opening of proposals having an effect on the cost or time of performance of the work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Vendor/Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a claim may be made therefore as provided in the Contract Documents.

- 11.1.2.7.20 **INTEGRATION CLAUSE:** This Agreement, including all exhibits, contains the entire Agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES (CURRENT VERSION), TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 352-754-4020, [TBRADY@HERNANDOCOUNTY.US](mailto:TBRADY@HERNANDOCOUNTY.US), WITH AN OFFICE LOCATED AT 15470 FLIGHT PATH DRIVE, BROOKSVILLE, FL 34604.**

**[Section 2.3.1 of the General Conditions of Contract sets forth a traditional negligence standard as it relates to the Design-Builder's performance of design professional services. If the Basis of Design Documents identify specific performance standards that can be objectively measured, the parties, by including the following language, agree that the Design-Builder is obligated to achieve such standards.]**

- Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

***[In lieu of Sections 10.3.1 through 10.3.3 of the General Conditions of Contract, the Parties may want to delete such sections and include the following alternative dispute resolution clause.]***

- Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the

procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.

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

**OWNER:**

**DESIGN-BUILDER:**

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

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

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

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

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

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

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

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

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

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

**Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.**





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

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**Document No. 535**

Second Edition, 2010

© Design-Build Institute of America

Washington, DC



## **Design-Build Institute of America - Contract Documents**

### **LICENSE AGREEMENT**

**By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.**

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

# INSTRUCTIONS

For DBIA Document No. 535 Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition)

## General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (DBIA) has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel. Moreover, care should also be taken when using different editions of the DBIA Standard Form Document on the same project to ensure consistency.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. DBIA's latest revisions to its Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project.</p> <p>Any modifications to these Documents should be initialed by the parties. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms-familiarity with the terms.</p>
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

## Specific Instructions

Section	Title	Instruction
General	Purpose of This Document	<p>The General Conditions of Contract provide the terms and conditions under which the Work of the Project will be performed.</p> <p>This document accompanies DBIA Document No. 525 and DBIA Document No. 530 (each referred to herein generally as "Agreement"). It may also be incorporated by reference into other related agreements, as between the Design-Builder and the Design Consultant, and the Design-Builder and the Subcontractor.</p>
General	Checklist	<p>The following Sections reference documents that are to be attached to the Agreement:</p> <p>Section 3.5.1 Owner's Permit List            Article 5 Insurance and Bonds            Section 9.4.2 Unit Prices</p>
2.1.3	Schedule	The parties are encouraged, if possible, to agree to a schedule for the execution of the Work upon execution of the Agreement or upon establishing the GMP.
2.2.1	Design Professional Services	The parties should be aware that in addition to requiring compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.
2.3.1	Standard of Care for Design Professional's Services	Design-Builder's obligation is to deliver a design that meets prevailing industry standards. However, DBIA has provided the parties at Article 11 of the Agreement an optional provision whereby if Owner can identify specific performance standards that can be objectively measured, Design-Builder is obligated to design the Project to satisfy these standards if this optional provision is selected. To avoid any confusion and to ensure that the parties fully understand what their obligations are, the specific performance standards should be clearly identified and should be able to be objectively measured. The Design-Builder should recognize that this is a heightened standard of care that has insurance ramifications that should be discussed with the Design-Builder's insurance advisor.
3.5.1	Government Approvals and Permits	Design-Builder is responsible for obtaining all necessary permits, approvals and licenses, except to the extent specific permits, approvals, and licenses are set forth in an Owner's Permit List, which must be attached as an exhibit to the Agreement. The parties, prior to execution of the Agreement, should discuss which permits, approvals and licenses need to be obtained for the Project and which party is in the best position to do so.
5.1.1	Design-Builder's Insurance Requirements	Design-Builder is obligated to provide insurance coverage from insurance carriers that meet the criteria set forth in the Insurance Exhibit attached to Section 10.1 of the Agreement.
5.1.2	Exclusions to Design-Build	Parties are advised that their standard insurance policies may contain exclusions for the design-build delivery method. This Section 5.1.2 requires that any such exclusions be deleted from the policy.
5.2	Owner's Insurance Requirements	Owner, in addition to providing the insurance set forth in this Section and Section 5.3, is also obligated to procure the insurance coverages for the amounts and consistent with the terms set forth in the Insurance Exhibit made part of the Agreement.
5.4	Bonds and Other Performance Security	Design-Builder is only obligated to provide bonds or other forms of performance security to the extent called for in Section 10.2 of the Agreement.

Section	Title	Instruction
8.2.2	Compensability for Force Majeure Events	The parties are provided the option in the Agreement of negotiating whether the Design-Builder is entitled to compensation for Force Majeure Events.
9.4.1	Contract Price Adjustments	Unit prices, if established, shall be attached pursuant to Article 2 of the Agreement.
9.4.3	Payment/ Performance of Disputed Services	When Owner disputes Design-Builder's entitlement to a change order or disagrees with Design-Builder regarding the scope of Work, and nevertheless expects Design-Builder to perform the services, Design-Builder's cash flow and ability to complete the Work will be hampered if Owner fails to pay Design-Builder for the disputed services. This Section provides a balanced approach whereby Design-Builder is required to perform the services, but Owner is required to pay fifty percent (50%) of Design-Builder's reasonable estimated direct costs of performing such services until the dispute is settled. By so doing, Owner does not forfeit its right to deny total responsibility for payment, and Design-Builder does not give up its right to demand full payment. The dispute shall be resolved according to Article 10.
Article 10	Contract Adjustments and Disputes	DBIA endorses the use of partnering, negotiation, mediation <del>and arbitration</del> for the prevention and resolution of disputes. The General Conditions of Contract provides for the parties' Representatives and Senior Representatives to attempt to negotiate the dispute or disagreement. If this attempt fails, the dispute shall be submitted to mandatory, non-binding mediation. Any dispute that cannot be resolved by mediation shall then be submitted to <del>binding arbitration, unless the parties elect in the Agreement to submit their dispute to a court of competent jurisdiction.</del>
10.3.4	Arbitration	<del>The prevailing party in any arbitration shall receive reasonable attorneys' fees from the other party. DBIA supports this "loser pays" provision to encourage parties to negotiate or mediate their differences and to minimize the number of frivolous disputes.</del>
10.4	Duty to Continue Performance	Pending the resolution of any dispute or disagreement, both Owner and Design-Builder shall continue to perform their respective duties under the Contract Documents, unless the parties provide otherwise in the Contract Documents.
10.5	Consequential Damages	DBIA believes that it is inappropriate for either Owner or Design-Builder to be responsible to the other for consequential damages arising from the Project. This limitation on consequential damages in no way restricts, however, the payment of liquidated damages, if any, under Article 5 of the Agreement.
11.4	Design-Builder's Right to Terminate for Cause	If Design-Builder properly terminates the Agreement for cause, it shall recover from Owner in the same way as if Owner had terminated the Agreement for convenience under Article 8 of the Agreement. Owner shall pay to Design-Builder its costs, reasonable overhead and profit on the costs, and an additional payment based on a percentage of the remaining balance of the Contract Price, all as more fully set forth in Article 8 of the Agreement.
Article 12	Electronic Data	Design-Builder and Owner shall agree on the software and format for the transmission of Electronic Data. Ownership of Work Product in electronic form is governed by Article 4 of the Agreement. The transmitting party disclaims all warranties with respect to the media transmitting the Electronic Data, but nothing in this Article is intended to negate duties with respect to the standard of care in creating the Electronic Data.

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# **Article 1**

## **General**

### **1.1 Mutual Obligations**

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

### **1.2 Basic Definitions**

**1.2.1** *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum* (2010 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition).

**1.2.2** *Basis of Design Documents* are as follows: For DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the "Basis of Design Documents." For DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum*, the Basis of Design Documents are the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any.

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

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

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

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

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

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

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

**1.2.10** *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of*

*Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

**1.2.11** *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*.

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

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

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

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

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

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

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

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

## **Article 2**

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

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

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

**2.1.2** Design-Builder shall provide Owner with a monthly status report detailing the progress of



the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

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

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

## **2.2 Design Professional Services.**

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

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

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

## **2.4 Design Development Services.**

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

to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

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

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

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

## **2.5 Legal Requirements.**

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

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

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

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

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

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

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

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-

Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

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

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

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

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

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

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

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

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

their performance of the Work.

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

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

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

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

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

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

## **Article 3**

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

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

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

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

**3.1.3** Owner shall give Design-Builder timely notice of any Work that Owner notices to be

defective or not in compliance with the Contract Documents.

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

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

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

**3.2.1.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

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

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

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

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

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

### **3.3 Financial Information.**

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

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

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

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

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

**3.5.1** Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

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

### **3.6 Owner's Separate Contractors.**

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

## **Article 4**

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

#### **4.1 Hazardous Conditions.**

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

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

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

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

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

**4.1.6** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for

whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

## **4.2 Differing Site Conditions.**

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

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

# **Article 5**

## **Insurance and Bonds**

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

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

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

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

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

**5.2.1** Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

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

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

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

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

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

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

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

**5.4.1** If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

**5.4.2** All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.



## **Article 6**

### **Payment**

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

**6.1.1** Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

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

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

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

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

**6.2.3** All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

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

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

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

**6.3.2** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay

Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

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

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

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

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

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

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

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

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

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

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

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

**6.7.2.1** An affidavit that there are no claims, obligations or liens outstanding or

unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

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

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

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

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

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

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

## **Article 7**

### **Indemnification**

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

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

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

**7.1.3** Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by

Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

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

## **7.2 Tax Claim Indemnification.**

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

## **7.3 Payment Claim Indemnification.**

**7.3.1** Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

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

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

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

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

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

## **Article 8**

### **Time**

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

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

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

**8.2.1** If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

**8.2.2** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

## **Article 9**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **9.5 Emergencies.**

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

# **Article 10**

## **Contract Adjustments and Disputes**

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

**10.1.1** If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

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

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

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

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

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

the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

### **10.3 Arbitration.**

~~10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.~~

~~10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.~~

~~10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.~~

~~10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.~~

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

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

### **10.5 CONSEQUENTIAL DAMAGES.**

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

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

## **Article 11**

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

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

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or



aggregate more than ninety (90) days during the duration of the Project.

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

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

**11.2.1** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

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

**11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

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

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

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

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

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

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

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

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

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

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

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

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

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

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

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

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

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

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

## **Article 12**

### **Electronic Data**

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

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

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

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

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

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

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

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

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

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

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

## **Article 13**

### **Miscellaneous**

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

**13.1.1** Subject to Chapter 119, Florida Statutes (Current Edition), confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

#### **13.2 Assignment.**

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

#### **13.3 Successorship.**

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

#### **13.4 Governing Law.**

**13.4.1** The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

#### **13.5 Severability.**

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

**13.6 No Waiver.**

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

**13.7 Headings.**

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

**13.8 Notice.**

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

**13.9 Amendments.**

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

**13.10 Public Records. F.S. 119.0701 (Current Edition)**

**13.10.1 Request for Records; Noncompliance**

13.10.1.1 A request to inspect or copy public records relating to a public agency's Contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Contractor of the request, and the Contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

13.10.1.2 If a Contractor does not comply with the public agency's request for records, the public agency shall enforce the Contract provisions in accordance with the Contract.

13.10.1.3 A Contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

**ATTACHMENT C**

**Proposal Form**

The Proposal form shall be submitted as part of the technical proposal package discussed within the RFP and is comprised of the following documents:

<b><u>SECTION</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>PAGES</u></b>
I.	Proposal Form	1

***REMAINDER OF PAGE INTENTIONALLY LEFT BLANK***

**Attachment C - Proposal Form  
21-R0077/PH**

**Design Build Services for the Lockhart Water Treatment Plant (WTP) Expansion  
COMPANY INFORMATION:**

COMPANY NAME: \_\_\_\_\_

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

CITY, STATE, ZIP CODE: \_\_\_\_\_

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

FAX: \_\_\_\_\_

EMAIL OF CONTACT: \_\_\_\_\_

**The Company shall submit one (1) original Proposal, four (4) copies (hardcopies), and one (1) CD or flash drive. If there is a discrepancy between the electronic copy and hard copy, the hard copy will prevail. Hernando County will not accept Proposals transmitted via email.**

\_\_\_\_ (Initials) I have read and understood the Sunshine Law/Public Records clauses contained within this solicitation. I understand that in the absence of a redacted copy my proposal will be disclosed to the public "as-is".

**Company's Certification**

By submitting this Proposal, the Proposer certifies that it has read and reviewed all of the documents pertaining to this RFP and agrees to abide by the terms and conditions set forth therein, that the person signing below is an authorized representative of the company, that the company is legally authorized to do business in the State of Florida, and that the company maintains in active status an appropriate license for the work. The company certifies that its recent, current, and projected workload will not interfere with the company's ability to Work in a professional, diligent and timely manner.

The Proposer certifies, under penalty of perjury, that it holds all licenses, permits, certifications, insurances, bonds, and other credentials required by law, contract or practice to perform the Work. The Proposer also certifies that, upon the prospect of any change in the status of applicable licenses, permits, certifications, insurances, bonds or other credentials, the Company shall immediately notify Hernando County of status change.

We have received addenda \_\_\_\_\_ through \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorize Officer of Company or Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Phone Number

**ATTACHMENT D**

**MINIMUM INSURANCE REQUIREMENTS**

**1. MINIMUM INSURANCE REQUIREMENTS:** Firm shall procure, pay for and maintain at least the following insurance coverage and limits. Said insurance shall be evidenced by delivery to the County of a certificate(s) of insurance executed by the insurers listing coverage and limits, expiration dates and terms of policies and all endorsements whether or not required by the County, and listing all carriers issuing said policies. The insurance requirements shall remain in effect throughout the term of this Contract.

1.1 **WORKERS' COMPENSATION:** As required by law:

STATE.....Statutory  
APPLICABLE FEDERAL.....Statutory  
EMPLOYER'S LIABILITY.....Minimum: \$100,000 each  
    accident  
    \$100,000 by employee  
    \$500,000 policy limit

**Exemption per Florida Statute 440:** If a Firm has less than three (3) employees and states that they are exempt per Florida Statute 440 (Current Edition), they must provide an exemption certificate from the State of Florida. Otherwise, they will be required to purchase Workers' Compensation Insurance and provide a copy of Workers Compensation Insurance. <http://www.myfloridacfo.com/wc/exemption.html>

1.2 **GENERAL LIABILITY:** Comprehensive General Liability including, but not limited to, Independent Contractor, Contractual Premises/Operations, and Personal Injury covering the liability assumed under indemnification provisions of this Contract, with limits of liability for personal injury and/or bodily injury, including death.

**COVERAGE AS FOLLOWS:**  
EACH OCCURRENCE.....\$1,000,000  
GENERAL AGGREGATE.....\$2,000,000  
PERSONAL/ADVERTISING INJURY.....\$1,000,000  
PRODUCTS-COMPLETED OPERATIONS AGGREGATE....\$2,000,000

Per Project Aggregate (if applicable)

**ALSO,** include in General Liability coverage for the following areas based on limits of policy, with minimum of:

FIRE DAMAGE (Any one (1) fire)..... \$50,000  
MEDICAL EXPENSE (Any one (1) person).....\$5,000

1.3 **ADDITIONAL INSURED:** Firm agrees to endorse Hernando County as an additional insured on the Comprehensive General Liability. The Additional Insured shall read "Hernando County Board of County Commissioners." Proof of Endorsement is required.

1.4 **WAIVER OF SUBROGATION:** Firm agrees by entering into this Contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Firm to enter into a pre-loss agreement to waive subrogation without an endorsement, then Firm agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of



Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Firm enter into such an agreement on a pre-loss basis.

1.5 **AUTOMOBILE LIABILITY**: Comprehensive automobile and truck liability covering any auto, all owned autos, scheduled autos, hired autos, and non-owned autos. Coverage shall be on an "occurrence" basis. Such insurance to include coverage for loading and unloading hazards.

**COVERAGE AS FOLLOWS:**

COMBINED SINGLE LIMIT (CSL).....	\$1,000,000
BODILY INJURY (Per Person).....	\$1,000,000
BODILY INJURY (Per Accident).....	\$1,000,000
PROPERTY DAMAGE.....	\$1,000,000

1.6  **Not-Required \_\_\_\_\_ (initials)**

**PLEASE NOTE: If box is not checked and initialed by Chief Procurement Officer, the specified insurance below is required.**

**PROFESSIONAL LIABILITY**: including Errors and Omissions with minimum limits of \$3,000,000.00 per occurrence, if occurrence form is available; or claims made form with "tail coverage" extending three (3) years beyond completion and acceptance of the Project with proof of "tail coverage" to be submitted with the invoice for final payment. In lieu of "tail coverage", Firm may submit annually to the County a current Certificate of Insurance proving claims made insurance remains in force throughout the same three (3) year period.

Notwithstanding the requirements for Professional Liability Insurance listed above, Engineer and/or Architect must provide evidence of coverage, a minimum of \$1,000,000.00.

1.7  **Not-Required \_\_\_\_\_ (initials)**

**PLEASE NOTE: If box is not checked and initialed by Chief Procurement Officer, the specified insurance below is required.**

**BUILDERS RISK INSURANCE**: Combined single limit must equal value of the construction, per project aggregate. The policy shall cover portions of the Work in transit, property scaffolding, false work and temporary buildings located at the site. The policy must cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, Ordinance or regulation. The insurance required herein must be on an all risk form and must be written to cover all risks of physical loss or damage to the insured party and must insure at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, lightening, earthquake, flood, water damage and windstorm. If there are any deductibles applicable to the insurance required herein, Firm must pay any part of any loss not covered because of the operation of such deductibles. The insurance as required herein must be maintained in effect until the earliest of the following date:

1.7.1 Date which all persons and organization that are insured under the policy agree in writing that it must be terminated;

1.7.2 Date on which final payment of this Contract has been made by County to Firm; or

- 1.7.3 Date on which the insurable interests in the property of all insured other the County have ceased.
- 1.7.4 Wind coverage to be included with a minimum deductible to be determined based on the project. Deductible will be a percentage based upon the total insured value.

1.8 **[ X ]** Not-Required \_\_\_\_\_(initials)

**PLEASE NOTE: If box is not checked and initialed by Chief Procurement Officer, the specified insurance below is required.**

**CRIME PREVENTION – BOND:** Firm shall procure a fiduciary bond in the amount of \$100,000 covering loss or theft by Firm, its Agents, or employees, and shall procure insurance in the amount of \$10,000 covering loss or theft by non-employees such as by burglary or robbery for any funds or negotiable instruments under the custody or care of Firm that would inure to the benefit of the County.

1.9 **[ X ]** Not-Required \_\_\_\_\_(initials)

**PLEASE NOTE: If box is not checked and initialed by Chief Procurement Officer, the specified insurance below is required.**

**EXCESS/UMBRELLA LIABILITY:** Firm shall provide proof of Excess/Umbrella Liability coverage with minimum limits of \$1,000,000. Limits can be increased, based on Contract.

1.10 **SUB-CONTRACTORS (if applicable):** All Sub-Contractors hired by said Firm are required to provide Hernando County Board of County Commissioners a Certificate of Insurance with the same limits required by the County as required by the Contract. All Sub-Contractors are required to name Hernando County Board of County Commissioners as additional insured and provide a Waiver of Subrogation in regards to General Liability.

1.11 **RIGHT TO REVISE OR REJECT:** County reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the criteria stated herein. Additionally, County reserves the right, but not the obligation, to review and reject any insurer providing coverage due of its poor financial condition or failure to operating legally.

1.12 Each insurance policy shall include the following conditions by endorsement to the policy:

1.12.1 Firm agrees to provide County with a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and the Certificate of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available by Firm’s insurer. If the Firm receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Firm agrees to notify the County by fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder shall read:

Hernando County Board of County Commissioners  
ATTN: Human Resources/Risk Department  
15470 Flight Path Drive  
Brooksville, FL 34604

- 1.12.2 Companies issuing the insurance policy, or policies, shall have no recourse against the County for payment of premiums or assessments for any deductibles which all are the sole responsibility and risk of Firm.
- 1.12.2.1 The term "County" or "Hernando County" shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments, and offices of the County and individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of Hernando County.
- 1.12.2.2 The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County, to any such future coverage, or to County's Self-Insured Retentions of whatever nature.
- 1.12.3 The Firm shall be required to provide a current Certificate of Insurance to the County prior to commencement of services.
- 1.12.4 Offerors may, at the County's request, be required to provide proof that their firm meets the preceding insurance requirements, by submission of a certificate of insurance coverage(s), prior to award of the Contract.
- 1.12.5 Failure of the County to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the County to identify a deficiency from evidence provided shall not be construed as a waiver of the Firm's obligation to maintain such insurance.

**BID BOND**

Any singular reference to Vendor/Contractor, Surety, Owner, or other party shall be considered plural where applicable.

\_\_\_\_\_  
VENDOR/CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER:

BOARD OF COUNTY COMMISSIONERS, HERNANDO COUNTY, FLORIDA  
15470 Flight Path Dr.  
Brooksville, Florida 34604

BID

Project:

**RFP 21-R00077/PH – DESIGN-BUILD OF LOCKHART WTP EXPANSION PROJECT**

**HERNANDO COUNTY, FL**

BOND

Bond Number:

Date (Not later than Bid due date):

Penal sum \_\_\_\_\_ (Words) \_\_\_\_\_ (Figures)

Surety and Vendor/Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

VENDOR/CONTRACTOR

SURETY

\_\_\_\_\_  
(Seal)  
Vendor/Contractor's Name and Corporate Seal

\_\_\_\_\_  
(Seal)  
Surety's Name and Corporate Seal

By: \_\_\_\_\_  
Signature and Title

By: \_\_\_\_\_  
Signature and Title  
(Attach Power of Attorney)

Attest: \_\_\_\_\_  
Signature and Title

Attest: \_\_\_\_\_  
Signature and Title

Note: Above addresses are to be used for giving required notice.

1. Vendor/Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Vendor/Contractor the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Surety's liability.
2. Default of Vendor/Contractor shall occur upon the failure of Vendor/Contractor to deliver within the time required by the Bid Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bid Documents and any performance and payment bonds required by the Bid Documents.
3. This obligation shall be null and void if:
  - 3.1. Owner accepts Vendor/Contractor's Bid and Vendor/Contractor delivers within the time required by the Bid Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bid Documents and any performance and payment bonds required by the Bid Documents, or
  - 3.2. All Bids are rejected by Owner, or
  - 3.3. Owner fails to issue a Notice of Award to Vendor/Contractor within the time specified in the Bid Documents (or any extension thereof agreed to in writing by Vendor/Contractor and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default by Vendor/Contractor and within thirty (30) calendar days after receipt by Vendor/Contractor and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Vendor/Contractor, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed One Hundred Twenty (120) days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to thirty (30) calendar days after the notice of default required in Paragraph 4 above is received by Vendor/Contractor and Surety and in no case later than one (1) year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Vendor/Contractor and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

Section 287.135 (Current Edition), Florida Statutes, prohibits agencies from Contracting with companies for goods or services of \$1,000,000.00 or more, that are on either the Scrutinized Companies with Activities in Sudan list, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector lists which are created pursuant to s. 215.473 F.S. (Current Edition), or the Scrutinized Companies that Boycott Israel list, created pursuant to s. 215.4725 F.S. (Current Edition), or companies that are engaged in a boycott of Israel or companies engaged in business operations in Cuba or Syria.

As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above in the section entitled "Respondent Vendor Name" is not listed on either the Scrutinized Companies with Activities in Sudan list or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector list, or the Scrutinized Companies that Boycott Israel list. I further certify that the company is not engaged in a boycott of Israel. I understand that pursuant to section 287.135 (Current Edition), Florida Statutes, the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs and does not have business operations in Cuba or Syria.

## PERFORMANCE AND PAYMENT BOND

**KNOW ALL MEN BY THESE PRESENTS**, that \_\_\_\_\_, hereinafter referred to as the "Vendor/Contractor," as Principal, and \_\_\_\_\_ hereinafter called "Surety," as Surety, are held and firmly bound unto Hernando County, hereinafter referred to as the "County," a Political Subdivision of the State of Florida as Obligee, in the full and just sum of \$\_\_\_\_\_ Dollars, lawful money of the United States of America, to the payment of which sum, well and truly to be made, the Vendor/Contractor and Surety bind themselves, their representatives, and each of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Vendor/Contractor has entered into a certain written Contract with the "County" dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the \_\_\_\_\_, with conditions and provisions as are further described in the aforementioned Contract, which Contract is by reference made a part hereof for the purpose of explaining this bond.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS** such that if Vendor/Contractor shall fully, promptly and faithfully perform said Contract and all obligations thereunder, including all obligations imposed by the Contract documents (which include the Solicitation-Offer-Award (Cover Page), Advertisement of Bid, Solicitation Instruction, General Conditions, Special Conditions, Scope and Specifications, Bid Form, Required Forms and Certifications, Exhibits, Agreement Form, Form(s) of Contract Bond(s), Plans and Specifications and such alterations thereof as may be made as provided for therein) and shall promptly make payments to all claimants for any and all labor and materials used or reasonably required for use or furnished in connection with the performance of said Contract, and shall perform all other covenants and obligations of this bond, then this obligation shall be void; otherwise it shall remain in full force and effect.

1. The undersigned shall indemnify and save harmless the County against and from all costs, expenses and damages, including litigation costs and attorney's fees arising out of, or in connection with the neglect, default or want of care or skill, including patent infringement on the part of said Vendor/Contractor, his agents, servants or employees in the execution or performance of said Contract.
2. The undersigned shall promptly make payment to all persons supplying services, labor, materials or supplies used directly or indirectly by said Vendor/Contractor, or any Sub-Contractor or Sub-Contractors, in the prosecution of the work provided for in said Contract.
3. The undersigned agrees to promptly pay the County any difference between the sum to which the Vendor/Contractor would be entitled on the completion of the Contract, and the sum which the County may be obligated to pay for the completion of said work by the Vendor/Contractor or otherwise, including any damages, direct or indirect, or consequential, which the County may sustain by reason of the failure of the Vendor/Contractor to properly and promptly perform and abide by all of the provisions of said Contract.
4. Subject to the County's priority, claimants covered by Section 713.01 of the Florida Statutes (current version) shall have a direct right of action against the Principal and Surety under this obligation, after written notice of the performance of labor or delivery of materials or supplies, and non-payment therefor. Any claimant who seeks to recover against the Principal or Surety under this obligation must also satisfy the notice requirements and time limitations of Section 255.05 of the Florida Statutes (current version).
5. The Vendor/Contractor shall save the County harmless from any and all damages, expenses and costs which may arise by virtue of any defects in said work or materials within

a period of one (1) year from the date of initial acceptance of the completed project, if applicable.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

VENDOR/CONTRACTOR, AS PRINCIPAL:

SURETY:

\_\_\_\_\_  
Principal Firm Name

\_\_\_\_\_  
Surety Name

By:

By:

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

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

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Typed Name and Title

WITNESS:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Typed Name and Title